

Shaun S. McCrea

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON</p> <p>NICHOLAS JAMES MCGUFFIN, as) No. 6:20-cv-1163-MK an individual and as guardian) (Lead Case) ad litem, on behalf of S.M.,) No. 3:21-cv-1719-MK a minor,) (Trailing Case)</p> <p style="text-align: center;">Plaintiffs,) v.)</p> <p>MARK DANNELS, PAT DOWNING,) Deposition of: SUSAN HORMANN, MARY KRINGS,) Shaun McCrea KRIS KARCHER, SHELLY MCINNES,) RAYMOND MCNEELY, KIP OSWALD,) December 4, 2023 MICHAEL REAVES, JOHN RIDDLE,) December 5, 2023 SEAN SANBORN, ERIC) SCHWENNINGER, RICHARD WALTER,) CHRIS WEBLEY, ANTHONY WETMORE,) KATHY WILCOX, CRAIG ZANNI,) DAVID ZAVALA, ESTATE OF DAVID) E. HALL, VIDEOQ SOCIETY, CITY) OF COQUILLE, CITY OF COOS) BAY, and COOS COUNTY,)</p> <p style="text-align: center;">Defendants.)</p> <hr/>	<p style="text-align: center;">1</p> <p style="text-align: center;">3</p> <p style="text-align: center;">APPEARANCES</p> <p>1</p> <p>2</p> <p>3 For the Plaintiffs:</p> <p>4 Ms. Janis Puracal</p> <p>5 Mr. Andrew C. Lauersdorf</p> <p>6 MALONEY LAUERSDORF & REINER</p> <p>7 1111 East Burnside Street, Suite 300</p> <p>8 Portland, Oregon 97214-1850</p> <p>9 503-245-1518</p> <p>10 jcp@mlrlegalteam.com</p> <p>11 acl@mlrlegalteam.com</p> <p>12</p> <p>13 For State Defendants Krings, Riddle, Wilcox, and</p> <p>14 Oregon State Police:</p> <p>15 Mr. Jesse B. Davis</p> <p>16 OREGON DEPARTMENT OF JUSTICE</p> <p>17 Civil Litigation Section Trial Division</p> <p>18 100 SW Market Street</p> <p>19 Portland, Oregon 97201-5702</p> <p>20 971-673-1880</p> <p>21 jesse.b.davis@doj.state.or.us</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Continued)</p>
<p style="text-align: center;">2</p> <p>1 VIDEOQ SOCIETY,) 2 Cross-Claimant.) 3 RICHARD WALTER,) 4 Cross-Claimant.)</p> <p>5</p> <p>6 NICHOLAS JAMES MCGUFFIN, as an) 7 individual and as guardian ad) 8 litem, on behalf of S.M., a) 9 minor,)</p> <p>10 Plaintiff,) 11 v.) 12 OREGON STATE POLICE,) 13 Defendant.)</p> <p>14</p> <p>15 DEPOSITION OF SHAUN MCCREA</p> <p>16 December 4, 2023; 9:51 A.M.</p> <p>17 December 5, 2023; 9:34 A.M.</p> <p>18</p> <p>19 THE VIDEO-RECORDED DEPOSITION OF SHAUN</p> <p>20 MCCREA was taken at the Oregon Department of</p> <p>21 Justice, 975 Oak Street, Suite 200, Eugene, Oregon,</p> <p>22 before Sara Fahey Wilson, CSR/CCR, Certified</p> <p>23 Shorthand Reporter in and for the State of Oregon</p> <p>24 and Washington.</p> <p>25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">APPEARANCES (Continued)</p> <p>1</p> <p>2</p> <p>3 For Defendants Dannels, Downing, Karcher, McInnes,</p> <p>4 McNeely, Oswald, Reaves, Sanborn, Schwenninger,</p> <p>5 Shapiro, Webley, Wetmore, Zanni, Zavala, City of</p> <p>6 Coquille, City of Coos Bay, and Coos County:</p> <p>7 Mr. Robert Franz, Jr.</p> <p>8 ROBERT FRANZ, JR. LAW OFFICES</p> <p>9 730 B Street</p> <p>10 Springfield, Oregon 97477-4720</p> <p>11 541-741-8220</p> <p>12 rfranz@franzlaw.comcastbiz.net</p> <p>13</p> <p>14 For Defendant Videoq Society:</p> <p>15 Ms. Rachel C. Jones</p> <p>16 HWS LAW GROUP - PDX</p> <p>17 101 SW Main Street, Suite 1605</p> <p>18 Portland, Oregon 97204</p> <p>19 503-542-1200</p> <p>20 rjones@hwslawgroup.com</p> <p>21 (Appearing remotely)</p> <p>22</p> <p>23</p> <p>24</p> <p>25 (Continued)</p>

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<p style="text-align: right;">41</p> <p>1 I'm not -- this may not be precisely from</p> <p>2 Ms. Puracal because I did review Judge Sullivan's</p> <p>3 opinion.</p> <p>4 So my understanding and awareness of the</p> <p>5 Brady issue is that the DNA report that I was given</p> <p>6 in discovery indicated that there was no other male</p> <p>7 profile on Leah Freeman's left shoe that was found</p> <p>8 up on the hillside, the one that had the blood on</p> <p>9 it, other than Leah Freeman and Officer Kip Oswald,</p> <p>10 the person who found it. But the issue is that</p> <p>11 based on the bench notes that the Oregon State Crime</p> <p>12 Lab personnel did, there was an indication of</p> <p>13 another male profile on that shoe of which I was not</p> <p>14 aware.</p> <p>15 Q. Okay. Okay.</p> <p>16 The left shoe was found in 2000. Right?</p> <p>17 A. Yes.</p> <p>18 Q. And a report was -- was written in 2000</p> <p>19 describing the DNA analysis done on the left and the</p> <p>20 right shoes. Right?</p> <p>21 A. I assume it was in 2000. It was what was</p> <p>22 given to me in discovery, whenever it was written.</p> <p>23 Q. Okay.</p> <p>24 I'm going to -- I'm going to hand you what</p> <p>25 will be marked as Exhibit 1. I have a binder here</p>	<p style="text-align: right;">43</p> <p>1 but its contents refer to Exhibits 1 and 2, and</p> <p>2 those are -- we'll call those OSP Lab Exhibits 1, 2,</p> <p>3 4, and several others. Okay?</p> <p>4 MR. FRANZ: You lost me there.</p> <p>5 MR. DAVIS: Do you have a copy of it?</p> <p>6 MR. FRANZ: So you're referring to</p> <p>7 other exhibits other than Exhibit 1 for her</p> <p>8 questions?</p> <p>9 MR. DAVIS: No. It's that Deposition</p> <p>10 Exhibit 1 itself refers to laboratory exhibits, and</p> <p>11 so --</p> <p>12 MR. FRANZ: Okay.</p> <p>13 MR. DAVIS: -- the record could be</p> <p>14 confusing on that, and I just wanted to call that</p> <p>15 out early on.</p> <p>16 MR. FRANZ: Okay.</p> <p>17 BY MR. DAVIS:</p> <p>18 Q. So just for sake of clarity, Exhibit --</p> <p>19 Lab Exhibit 1 as referenced in Deposition Exhibit 1</p> <p>20 is the right Nike tennis shoe. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And Exhibit -- Lab Exhibit 2 as referenced</p> <p>23 in this document is the left Nike shoe?</p> <p>24 A. Yes.</p> <p>25 Q. The left Nike shoe, as you said, was found</p>
<p style="text-align: right;">42</p> <p>1 so they are all just going to be in there, but I'll</p> <p>2 have you look at Exhibit 1.</p> <p>3 (Deposition Exhibit 1</p> <p>4 marked for identification.)</p> <p>5 MS. PURACAL: I've got it</p> <p>6 electronically if you want to use those for those</p> <p>7 guys.</p> <p>8 MR. DAVIS: All right.</p> <p>9 BY MR. DAVIS:</p> <p>10 Q. If I can leave that in there, that will</p> <p>11 make it a little bit easier.</p> <p>12 MR. DAVIS: (To the reporter) This</p> <p>13 has just been marked by me electronically. I don't</p> <p>14 know if you need to mark it.</p> <p>15 BY MR. DAVIS:</p> <p>16 Q. So I've handed you Exhibit 1. Are you</p> <p>17 familiar with that --</p> <p>18 A. Yes.</p> <p>19 Q. -- document? And is -- that's a report</p> <p>20 dated August 27th, 2000, from the Oregon State</p> <p>21 Police Forensic Laboratory?</p> <p>22 A. Yes.</p> <p>23 Q. And it describes on its first page items</p> <p>24 described as Exhibit 1 and Exhibit 2. Now, for</p> <p>25 clarity of the record, this is Deposition Exhibit 1</p>	<p style="text-align: right;">44</p> <p>1 up on Hudson Ridge. Right?</p> <p>2 A. Yes.</p> <p>3 Q. The hillside, as you said?</p> <p>4 A. Yes.</p> <p>5 Q. And the right shoe was found -- where was</p> <p>6 the right shoe found?</p> <p>7 A. It was found down on -- in town.</p> <p>8 Q. Near the cemetery?</p> <p>9 A. Yeah, near the cemetery on Elm Street. I</p> <p>10 don't remember the name.</p> <p>11 Q. Okay.</p> <p>12 As it relates to the left shoe, turning to</p> <p>13 the second page, I see in conclusion number one,</p> <p>14 (as read): The DNA profile from Exhibit 1,</p> <p>15 right Nike shoe, and Exhibit 2.1.2, swab from</p> <p>16 blood on left sole matches the DNA profile</p> <p>17 from Leah Freeman.</p> <p>18 Right?</p> <p>19 A. Right.</p> <p>20 Q. And then as conclusion number 3</p> <p>21 (as read): The DNA profiles from Exhibit</p> <p>22 2.3, left Nike shoe, indicate the presence of</p> <p>23 DNA from more than one person. The major</p> <p>24 profile is consistent with coming from Leah</p> <p>25 Freeman. The minor profile is from a male.</p>

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<p>57</p> <p>1 A. SANE. It's S-A-N-E.</p> <p>2 Q. What does that refer to?</p> <p>3 A. I don't know what the acronym stands for,</p> <p>4 but they do the analysis on the rape kits --</p> <p>5 Q. I see. Okay.</p> <p>6 A. -- and so it's checking that information.</p> <p>7 Q. Okay. Okay.</p> <p>8 So this is a difficult question to spit</p> <p>9 out. I'll try. It may not be the best, but I'm</p> <p>10 going to try.</p> <p>11 A. Okay. I'm ready.</p> <p>12 Q. So the basic question is have you ever</p> <p>13 used a forensic expert to contest or dispute the</p> <p>14 relevance, you know, or probativeness of a</p> <p>15 particular piece of forensic evidence?</p> <p>16 In other words, not disputing the analysis</p> <p>17 itself, just what inferences should be drawn from</p> <p>18 the analytical results.</p> <p>19 Does that make sense?</p> <p>20 In other words, for example, you know, if</p> <p>21 DNA is found on a particular item, you still have to</p> <p>22 ask, So what? What's the relevance of it being on</p> <p>23 that item? And that would -- its relevance would</p> <p>24 have to do with what the item is, where it was</p> <p>25 found, who owned it, other kinds of considerations</p>	<p>59</p> <p>1 I know that I hired Karen Lawless in a DNA</p> <p>2 case to have her review some DNA, and I know that</p> <p>3 this was after the McGuffin case. And it was</p> <p>4 precisely for that purpose, to see if there was a</p> <p>5 way to explain it away because in the more recent</p> <p>6 case, the defendant's DNA was on the item, and Karen</p> <p>7 and I went through a lot of things about different</p> <p>8 kinds of DNA. And she didn't testify because she</p> <p>9 couldn't help me or the defendant.</p> <p>10 So, yeah, there's -- it's like trying to</p> <p>11 think of all these examples for you. But, yeah, if</p> <p>12 there is an item in which I am concerned -- like, if</p> <p>13 in this case mixed DNA had been on it, we would have</p> <p>14 had a much different situation, but we didn't have</p> <p>15 mixed DNA on anything.</p> <p>16 And the report that I had said that it</p> <p>17 was -- it was X, and then I was told in a subsequent</p> <p>18 report and affirmatively by the district attorney</p> <p>19 that the only other DNA was Kip Oswald.</p> <p>20 Q. So going back to kind of the long arc of</p> <p>21 my question, you know, the question was about the</p> <p>22 relevant circumstances and the relationships between</p> <p>23 the various people involved.</p> <p>24 Those could be considerations that would</p> <p>25 go into an argument about the relevance of a</p>
<p>58</p> <p>1 like that.</p> <p>2 So my question to you, then, is have you</p> <p>3 ever had occasion to do that where the argument is,</p> <p>4 Yes, this person's DNA is on this item but that's</p> <p>5 not important or it's -- it doesn't prove what the</p> <p>6 prosecution says it proves?</p> <p>7 MS. PURACAL: Objection. Compound.</p> <p>8 BY MR. DAVIS:</p> <p>9 Q. I'm sure it is compound, but I want you to</p> <p>10 do your best.</p> <p>11 A. Okay.</p> <p>12 Is your question limited to DNA? Because</p> <p>13 originally you started out as any kind of an</p> <p>14 expert --</p> <p>15 Q. It's not limited.</p> <p>16 A. -- to basically interpret evidence, what</p> <p>17 the inferences the jury should take.</p> <p>18 I mean, clearly in the old days when I did</p> <p>19 some DUI cases, when you would have a blood alcohol</p> <p>20 result, I hired an expert to talk to the jury about</p> <p>21 extrapolation and what they could take from it and</p> <p>22 how just because the blood alcohol was X didn't mean</p> <p>23 that at the time the defendant was driving that the</p> <p>24 blood alcohol would have been above the legal limit.</p> <p>25 So there's one example.</p>	<p>60</p> <p>1 particular piece of DNA. Right?</p> <p>2 In other words, I know that you said</p> <p>3 McGuffin's DNA wasn't on items, but even had it</p> <p>4 been, it would not have been particularly</p> <p>5 informative because of the relationship between</p> <p>6 Mr. McGuffin and Ms. Freeman?</p> <p>7 Does that make sense?</p> <p>8 A. Well, you're saying if Nick's DNA had been</p> <p>9 on something it wouldn't have been a big deal</p> <p>10 because they were boyfriend/girlfriend?</p> <p>11 Q. Correct.</p> <p>12 A. And you would expect to find his DNA?</p> <p>13 Q. Correct.</p> <p>14 A. Okay.</p> <p>15 Q. Do you disagree with that, is my question?</p> <p>16 MS. PURACAL: Objection. Privilege.</p> <p>17 Work product.</p> <p>18 BY MR. DAVIS:</p> <p>19 Q. Do you disagree with that idea generally,</p> <p>20 not regarding Mr. McGuffin?</p> <p>21 A. Okay.</p> <p>22 Now I'm confused about what your idea</p> <p>23 generally is. Can you explain -- can you explain it</p> <p>24 to me so I have it exactly right?</p> <p>25 Q. Well, again, I'm just -- I'm just trying</p>

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<p>85</p> <p>1 MR. FRANZ: What page are you on, 2 Jesse? 3 MR. DAVIS: I'm on page -- handwritten 4 page 151. 5 A. Okay. I got it. 6 BY MR. DAVIS: 7 Q. Do you -- these are -- I'll just represent 8 to you these are what are called Allele Call Tables. 9 Have you -- had you -- would you have known how to 10 read these in 2000? 11 A. I don't know. 12 Q. What about in 2011? 13 A. I don't know. 14 Q. Do you think you would have understood 15 them as of the year 2011 at the time of McGuffin's 16 trial? 17 A. I probably would have needed expert 18 assistance to interpret them. 19 Q. And do you see there's a little key at the 20 bottom of those pages where it says "key," there's a 21 greater sign equals greater than, less equals less 22 than. 23 Do you see that? 24 A. Right. 25 Q. And then there's a parentheses sign,</p>	<p>87</p> <p>1 A. I mean, what I understand is that the 2 bench notes relate to what's in Exhibit 1. 3 BY MR. DAVIS: 4 Q. What do you understand that the Bates 5 notes -- excuse me. 6 What do you understand that the bench 7 notes are generally? 8 A. The bench notes are generally the detail 9 of the lab work that was done by the lab technician 10 at the OSP lab to make a determination regarding the 11 samples for DNA, DNA analysis, and results. 12 Q. Were you aware at the time of the McGuffin 13 trial whether the OSP lab's DNA unit was accredited 14 in the -- in the sense of what the, sort of, 15 national accrediting bodies were or required? 16 A. It was my belief that it was. 17 Q. And were you aware that DNA analysis labs, 18 in order to be accredited, had to have written 19 protocols of a certain -- covering certain subjects? 20 MS. FURACAL: Objection to the extent 21 that you're getting into work product. I think 22 we're skirting the line here, Jesse. 23 So are you asking her about Brady 24 evidence or are you asking her about her 25 investigation into the lab?</p>
<p>86</p> <p>1 equals 50 dash 150 RFUS? 2 A. Right. 3 Q. RFUS? 4 A. Uh-huh. 5 Q. Would you have needed an expert to 6 understand that as well in 2011? 7 A. Probably. 8 Q. Do you now have a better understanding of 9 how to read these tables? 10 A. As I sit here today, no. 11 Q. And I think you've already answered that 12 you think you would have reviewed these pages in 13 your review of documents during the McGuffin case? 14 A. If they were provided in discovery, yes. 15 And apparently they were, so, yes. 16 Q. Okay. 17 And you think they were primarily because 18 of the Bates numbers -- 19 A. Yes. 20 Q. -- on them? Okay. 21 So do you now understand the August 27th, 22 2000, report that appears in Deposition Exhibit 1 to 23 involve, at least in part, a comparison of these 24 Allele Call Tables with each other? 25 MS. FURACAL: Objection. Vague.</p>	<p>88</p> <p>1 MR. DAVIS: I'm asking what she knows 2 or knew about lab accreditation, so -- and how it 3 related to results that she might encounter. 4 MS. FURACAL: I'm going to object to 5 the extent that that does not get into her awareness 6 of Brady evidence. And it sounds like what you're 7 doing is getting into her investigation and her work 8 product. 9 BY MR. DAVIS: 10 Q. Were you aware that the OSP lab had 11 protocols governing its DNA analysis at the time of 12 the McGuffin trial? 13 A. I don't know. 14 Q. Were you -- were you aware that those 15 protocols governed various aspects of how -- that 16 the laboratory work itself was to be performed? 17 MS. FURACAL: Objection. Work 18 product. 19 A. I'm going to have to agree, it's work 20 product. 21 BY MR. DAVIS: 22 Q. The state of your knowledge at a certain 23 time is the work product itself? Isn't the work 24 product the work product and not, sort of, a state 25 of information?</p>

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<p style="text-align: right;">97</p> <p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. And did you understand Exhibit 4 to mean</p> <p>4 that Kip Oswald was the only other person whose DNA</p> <p>5 was found in that particular mixture that would be</p> <p>6 2.3?</p> <p>7 A. That's what the report indicates in</p> <p>8 Deposition Exhibit 4.</p> <p>9 Q. Okay.</p> <p>10 Now, this was the left shoe, right, the</p> <p>11 one that had the blood on it?</p> <p>12 A. Correct.</p> <p>13 Q. And we went over earlier that this had</p> <p>14 been tested as to, kind of, areas that would be in</p> <p>15 contact with the wearer of the shoe, right, like the</p> <p>16 tongue, the ankle, the heel?</p> <p>17 MS. FURACAL: Objection. Calls for</p> <p>18 speculation and misstates facts.</p> <p>19 BY MR. DAVIS:</p> <p>20 Q. Well, we did go over page 2 on Exhibit 2</p> <p>21 which described the places where it was sampled. Do</p> <p>22 you remember that?</p> <p>23 A. I remember you asking me those questions</p> <p>24 about Deposition Exhibit 1, page 2.</p> <p>25 Q. And referring you to Deposition Exhibit 2,</p>	<p style="text-align: right;">99</p> <p>1 At the time of the McGuffin trial did you</p> <p>2 know that that is why those areas had been sampled?</p> <p>3 In other words, they were sampled in order to</p> <p>4 determine who the wearer of the shoe was likely to</p> <p>5 have been?</p> <p>6 MS. FURACAL: Objection. Misstates</p> <p>7 facts and calls for speculation.</p> <p>8 A. That was not my understanding of the</p> <p>9 sampling. It was the sampling for the DNA --</p> <p>10 whether there was DNA on the shoes. What I was</p> <p>11 aware of is the report in Deposition Exhibit 1, the</p> <p>12 report in Deposition Exhibit 4, which showed me who</p> <p>13 had -- who the crime lab found DNA from.</p> <p>14 It was the Oregon State Crime Lab, which I</p> <p>15 believed to be a reliable source that I could trust,</p> <p>16 and I was independently told by the prosecution that</p> <p>17 what was on the shoe -- in the left shoe, in Exhibit</p> <p>18 4 -- was the only DNA, meaning the other -- in</p> <p>19 addition to Leah, that it was Kip Oswald, no one</p> <p>20 else, and so that's what I looked at.</p> <p>21 BY MR. DAVIS:</p> <p>22 Q. And that was a discussion that you had</p> <p>23 with Paul Frasier, the portion where you said</p> <p>24 independently told by the DA?</p> <p>25 A. I believe it was with Paul Frasier because</p>
<p style="text-align: right;">98</p> <p>1 page 2, that's where we went over the handwritten</p> <p>2 notes where it described where it had been -- where</p> <p>3 the cuttings had been taken.</p> <p>4 A. Yep. Uh-huh.</p> <p>5 Q. So the tongue, heel, ankle areas, those</p> <p>6 would be areas where the shoe would come into</p> <p>7 contact with the wearer of the shoe, and -- I'll</p> <p>8 leave it at that?</p> <p>9 MS. FURACAL: Objection as to -- calls</p> <p>10 for speculation and an expert opinion.</p> <p>11 MR. DAVIS: I really struggle to feel</p> <p>12 like it's an expert opinion to state whether the</p> <p>13 heel of a shoe touches the heel of the person</p> <p>14 wearing the shoe.</p> <p>15 A. I think the problem is the question of</p> <p>16 whether the DNA was on the shoe at the time the</p> <p>17 person was wearing it.</p> <p>18 BY MR. DAVIS:</p> <p>19 Q. I'm sorry. I don't think I understood</p> <p>20 you.</p> <p>21 A. You're assuming that the person had the</p> <p>22 shoe on and, thus, it was in contact with the heel</p> <p>23 and that was when the DNA was transferred. We don't</p> <p>24 know that.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">100</p> <p>1 I was -- I was just really -- I was -- well, I was</p> <p>2 disappointed, let's say. And I had that discussion.</p> <p>3 And now we've got a Brady issue because we</p> <p>4 know that, in fact, the lab should have come clean,</p> <p>5 but instead in 2000 they do one exam, in 2002 they</p> <p>6 do another, and they don't -- they don't put in the</p> <p>7 report what was in the bench notes.</p> <p>8 Q. So your description of "they should have,"</p> <p>9 the source of that information is what?</p> <p>10 A. Is since the time of the PCR trial when</p> <p>11 Mr. Frasier had an independent DNA examiner go back</p> <p>12 and look at the evidence who determined that, in</p> <p>13 fact, the Oregon State Crime Lab should have -- did</p> <p>14 not follow protocols and should have put this</p> <p>15 information in the reports.</p> <p>16 Q. When you say they didn't follow protocols</p> <p>17 and should have put this in the report, are you --</p> <p>18 do you yourself understand what the protocols were?</p> <p>19 Or are you simply taking that, like, from the PCR</p> <p>20 judgment?</p> <p>21 A. I'm taking that from the PCR judgment.</p> <p>22 Q. Okay. All right.</p> <p>23 Did you -- were you also aware that a swab</p> <p>24 containing blood found on the left shoe was also</p> <p>25 tested for DNA?</p>

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<p style="text-align: right;">185</p> <p>1 Q. Okay.</p> <p>2 Were you aware of the gas leak?</p> <p>3 A. I don't remember, honestly.</p> <p>4 Q. Do you know where the information about</p> <p>5 the gas leak -- strike that.</p> <p>6 Do you know where the information that</p> <p>7 there was a gas leak came from?</p> <p>8 A. As I sit here today, no.</p> <p>9 Q. Okay.</p> <p>10 What -- what other -- what other items are</p> <p>11 Brady information in the way you've described them</p> <p>12 today?</p> <p>13 MS. PURACAL: Before the witness</p> <p>14 starts, can I just clarify the record?</p> <p>15 You're asking her what items she is</p> <p>16 aware of now today that Plaintiffs in this civil</p> <p>17 suit have alleged are Brady evidence that was</p> <p>18 withheld in the criminal case? Is that right?</p> <p>19 MR. DAVIS: That's right.</p> <p>20 MS. PURACAL: Okay.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 A. So there is an email from Susan Hornmann,</p> <p>23 H-O-R-M-A-N-N, sent March 15th, 2010, to P. Smith,</p> <p>24 City of Coquille. Subject, FBI MITO testing in Leah</p> <p>25 Freeman case. And it talks about the DA wants hairs</p>	<p style="text-align: right;">187</p> <p>1 right way to describe it -- but is that a -- sort of</p> <p>2 a figment or an artifact of practice?</p> <p>3 Have you heard that term before?</p> <p>4 A. Yes, I've heard that term before. It</p> <p>5 means someone other than the defendant committed the</p> <p>6 crime.</p> <p>7 Q. Okay.</p> <p>8 So that's sort of -- and is it used in</p> <p>9 that way in that email?</p> <p>10 A. Yes, it is.</p> <p>11 Q. You have heard that used elsewhere before?</p> <p>12 A. Of course.</p> <p>13 Q. Okay.</p> <p>14 What other Brady items -- or items are</p> <p>15 said to be Brady -- in the materials you have?</p> <p>16 A. The second item would be the Oregon State</p> <p>17 Police report. I have an interview with Nick</p> <p>18 Backman, B-A-C-K-M-A-N. This would have been on</p> <p>19 September 20th, 2000, by -- I think it's Officer</p> <p>20 Zamni, Z-A-N-N-I.</p> <p>21 And Nick Backman indicated that he had</p> <p>22 seen Leah Freeman at the credit union on the night</p> <p>23 of June 28th, the night that she disappeared, and</p> <p>24 Mr. Backman was using an ATM at the credit union.</p> <p>25 Zamni checked with the credit union and</p>
<p style="text-align: right;">186</p> <p>1 done because the defense would make an issue if they</p> <p>2 are not examined. And the email goes through</p> <p>3 basically topics to consider before proceeding with</p> <p>4 the trace evidence.</p> <p>5 BY MR. DAVIS:</p> <p>6 Q. Okay.</p> <p>7 And is there any information you're given</p> <p>8 there about the -- sort of the Brady nature of that,</p> <p>9 like, why that's Brady?</p> <p>10 A. Well, number two in that email specifies</p> <p>11 (as read): You're almost guaranteed to find</p> <p>12 foreign hairs in a trace exam. This ends up</p> <p>13 giving the defense the bushy haired stranger</p> <p>14 they are looking for.</p> <p>15 Q. And the --</p> <p>16 A. The --</p> <p>17 Q. Go ahead.</p> <p>18 A. The tenor of the email is suggesting -- at</p> <p>19 least I'm inferring from the tenor of the email --</p> <p>20 that the suggestion is not to do the hair testing</p> <p>21 because it would be helpful to the defense and the</p> <p>22 value of association would be minimal.</p> <p>23 Q. Okay.</p> <p>24 And the bushy haired stranger, is that</p> <p>25 sort of a term of, like a -- I don't know quite the</p>	<p style="text-align: right;">188</p> <p>1 confirmed a \$10 withdrawal on June 28th, 2000, at</p> <p>2 9:04 p.m., and Mr. Backman believes that Leah walked</p> <p>3 by at that time. Described her clothes accurately.</p> <p>4 He then went to Fast Mart to get something to eat</p> <p>5 and stated there was hardly anyone around.</p> <p>6 The time of 9:04 is significant because</p> <p>7 that is a -- that is a sighting of Leah at a time</p> <p>8 when she -- I think it's -- another witness had</p> <p>9 tried to put her arguing with Nick at a different</p> <p>10 location -- so this is a pretty important report.</p> <p>11 Q. Do you remember who that other witness</p> <p>12 was?</p> <p>13 A. That would be John Lindegren.</p> <p>14 Q. And incidentally, you described that as</p> <p>15 an OSP report. It says -- does it say Oregon State</p> <p>16 Police, like, tip sheet or something?</p> <p>17 A. It says -- it says Oregon State Police,</p> <p>18 and it is a -- I guess that would make him a</p> <p>19 trooper, or something. Oregon State Police at the</p> <p>20 top.</p> <p>21 Q. Okay. Thank you.</p> <p>22 All right. And then what other items are</p> <p>23 in there in your binder as -- to be Brady?</p> <p>24 A. So next we have a -- it's handwritten</p> <p>25 notes of -- I don't know how to pronounce this --</p>

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<p style="text-align: right;">197</p> <p>1 There's also -- and I may be missing</p> <p>2 something because I haven't had this very long.</p> <p>3 There's also a typewritten report that sets out</p> <p>4 recording information on the scene, and that's a</p> <p>5 report -- that's a report that was not provided.</p> <p>6 Q. Meaning you did not have that at the time</p> <p>7 of trial?</p> <p>8 A. Correct. With great detail. There's a</p> <p>9 diagram, which I did not have. There is also</p> <p>10 handwritten notes.</p> <p>11 Q. On the subject of a camera at the body</p> <p>12 site?</p> <p>13 A. Yes. Yeah, videotape.</p> <p>14 And a police -- Coquille Police Department</p> <p>15 property request with the videotape of the crime</p> <p>16 scene being apparently released to Kris Karcher.</p> <p>17 Q. Okay.</p> <p>18 Anything else sort of on this -- on this</p> <p>19 subject of the body site and recovery?</p> <p>20 A. I think that's it. Forgive me if I missed</p> <p>21 something. Give me just a minute to look at the --</p> <p>22 and handwritten notes with reference to the camera</p> <p>23 at the crime scene.</p> <p>24 (Pause.)</p> <p>25 Q. So can I ask about this -- this scene?</p>	<p style="text-align: right;">199</p> <p>1 this is a report of -- I don't have the right one --</p> <p>2 that (as read): Hamilton pointed out the spot</p> <p>3 Mr. McGuffin indicated to him as to where</p> <p>4 victim's body had been found. This was not, in</p> <p>5 fact, the actual location.</p> <p>6 And at the time that Hamilton claims Nick</p> <p>7 McGuffin went to that area was after Leah had been</p> <p>8 found. And there are handwritten notes that</p> <p>9 reference that a white cross had been placed in that</p> <p>10 area. And it shows from the handwritten notes that</p> <p>11 the place that Hamilton said Nick McGuffin went was</p> <p>12 not where the body was found. It was a ways away</p> <p>13 from that.</p> <p>14 Q. Okay. All right. All right.</p> <p>15 Let's go to your next sort of major</p> <p>16 subject.</p> <p>17 A. There is an email from R. McNelly that</p> <p>18 talks about information that the State had that --</p> <p>19 I'm presuming John Riddle is a police officer --</p> <p>20 found an old document from June 29th, 2000, at 2:12</p> <p>21 a.m., from Bruce McGuffin's gas card being used at</p> <p>22 the pumps off by 42 by 42 South and records on the</p> <p>23 phone booth that was located across from the high</p> <p>24 school.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">198</p> <p>1 Have you reviewed those documents to determine how</p> <p>2 they would have affected your defense if you had</p> <p>3 them?</p> <p>4 A. I've reviewed them -- I've just reviewed</p> <p>5 them very cursorily.</p> <p>6 Q. Do you have an impression as to how they</p> <p>7 would have aided the defense of Mr. McGuffin?</p> <p>8 A. My recollection is that one of the</p> <p>9 prosecution witnesses contended that there was a</p> <p>10 path to where the body was and that Mr. McGuffin</p> <p>11 went there and looked down as though he were looking</p> <p>12 at the body. So this information indicates that</p> <p>13 there was really not a path and that the foliage had</p> <p>14 not been tamped down, or changed, or moved, and so</p> <p>15 that was not credible -- a credible representation.</p> <p>16 That's one part of it.</p> <p>17 Q. Is there anything else to it?</p> <p>18 A. There's -- I may not be finding it in</p> <p>19 here. There's also information that there was a</p> <p>20 claim by Scott Hamilton -- I know that's in here</p> <p>21 farther on -- there's a claim by Scott Hamilton at</p> <p>22 trial that Nick McGuffin went down by the river and</p> <p>23 down to the area where Leah was found. The</p> <p>24 implication being that Nick knew where the body was.</p> <p>25 But, in fact, Hamilton -- the report indicates --</p>	<p style="text-align: right;">200</p> <p>1 I take it you were unaware of whatever it</p> <p>2 is you're looking at --</p> <p>3 A. I did not have --</p> <p>4 Q. -- at the time of McGuffin's trial?</p> <p>5 A. I knew that there were -- I knew that --</p> <p>6 the fact of the gas card being used was important,</p> <p>7 but I didn't know that the prosecution had those</p> <p>8 documents. Because I could have then used that to</p> <p>9 admit that into evidence through them.</p> <p>10 Q. You could have gotten the records</p> <p>11 regarding the -- when the gas card was used? You</p> <p>12 could have used that -- you could have introduced</p> <p>13 those records through the cops?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 Any other major subjects?</p> <p>17 A. I think there's -- I think, Mr. Davis,</p> <p>18 there's more, but I may not be as conversant as I</p> <p>19 would like to be.</p> <p>20 Q. Okay. That's fine.</p> <p>21 We can move on from that. And since we'll</p> <p>22 get a copy of that, we'll be able to take a look.</p> <p>23 Returning briefly to something we were</p> <p>24 discussing earlier, Ms. Wilcox, as you said, noted,</p> <p>25 you know, with some emphasis that there was -- with</p>

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<p style="text-align: right;">281</p> <p>1 Q. Okay.</p> <p>2 And do you have any -- sorry. Let me</p> <p>3 rephrase that.</p> <p>4 Today as you're sitting here are you aware</p> <p>5 that Richard Walter came to Oregon in connection</p> <p>6 with ABC's 20/20 episode?</p> <p>7 A. No.</p> <p>8 MS. JONES: Okay.</p> <p>9 I believe that is all my questions.</p> <p>10 Thank you so much.</p> <p>11 MS. PURACAL: Anyone else on the Zoom?</p> <p>12 MS. COFFIN: I just have one, maybe</p> <p>13 two questions. Laura Coffin with Richard Walter.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MS. COFFIN:</p> <p>17 Q. Ms. McCrea, you said that you -- excuse</p> <p>18 me -- became aware of Mr. Walter when you -- when</p> <p>19 you received some Brady material. Roughly when was</p> <p>20 that?</p> <p>21 A. That would have been a few days ago.</p> <p>22 Q. And could you just basically describe what</p> <p>23 that material was?</p> <p>24 A. It appears to be a memorandum or report</p> <p>25 from the Vidocq organization that sets out a theory</p>	<p style="text-align: right;">283</p> <p>1 (Deposition Exhibit 38</p> <p>2 marked for identification.)</p> <p>3 MS. PURACAL: Any other questions?</p> <p>4 MR. DAVIS: I just think that's</p> <p>5 something that she needs to say.</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. FRANZ:</p> <p>9 Q. So can you tell us what Exhibit 38 is?</p> <p>10 A. 38 is -- I thought I did this yesterday?</p> <p>11 But 38 is a binder that contains the order on</p> <p>12 Plaintiffs' motion to modify subpoena. It also</p> <p>13 contains a number of reports, evidence reports, and</p> <p>14 deposition excerpts that -- the reports either were</p> <p>15 not in my file or the information was not</p> <p>16 information that I had.</p> <p>17 And at the back of the -- at the back of</p> <p>18 the binder is a copy of Judge Sullivan's general</p> <p>19 judgment in Mr. McGuffin's post-conviction relief</p> <p>20 case.</p> <p>21 Q. Did you put the notebook together?</p> <p>22 A. No.</p> <p>23 Q. It was handed to you just like it is?</p> <p>24 A. It was -- yes.</p> <p>25 Q. And who handed it to you?</p>
<p style="text-align: right;">282</p> <p>1 implicating Mr. McGuffin in the disappearance and</p> <p>2 killing of Leah McGuffin, and it mentioned</p> <p>3 "Richard," which I took to be Richard Walter.</p> <p>4 Q. And this was a memorandum. Do you</p> <p>5 recall -- do you recall whom it was written to?</p> <p>6 A. I can -- if you give me just a minute,</p> <p>7 Ms. Coffin, I can take a look. I don't know who it</p> <p>8 was written to. It says "synopsis of Vidocq Society</p> <p>9 cases," and it is labeled 207, period, the murder of</p> <p>10 Leah Freeman, 2000, and then apparently goes through</p> <p>11 the whole scenario to the point of the outcome.</p> <p>12 Q. And that was Deposition Exhibit 38?</p> <p>13 A. Correct.</p> <p>14 Q. Thank you.</p> <p>15 MS. COFFIN: That is all I have.</p> <p>16 MS. PURACAL: This is Janis Puracal</p> <p>17 for Plaintiffs. I just want to put on the record</p> <p>18 that I don't think we've marked Deposition 38 --</p> <p>19 Deposition Exhibit 38 -- but Ms. McCrea discussed it</p> <p>20 on the record yesterday. It was the binder of</p> <p>21 documents that she discussed with counsel for the</p> <p>22 State defendants, and then she's obviously pointed</p> <p>23 to it today so we're just going to mark it as</p> <p>24 Exhibit 38.</p> <p>25 / / /</p>	<p style="text-align: right;">284</p> <p>1 A. Ms. Puracal.</p> <p>2 MR. FRANZ: Thank you.</p> <p>3</p> <p>4 EXAMINATION</p> <p>5 BY MS. PURACAL:</p> <p>6 Q. And I'll just clarify. There's little</p> <p>7 Post-It notes on it now. When I handed you the</p> <p>8 binder did it have those Post-It notes on it?</p> <p>9 A. No. I went through it and I put -- after</p> <p>10 my conversation with Mr. Davis yesterday I thought</p> <p>11 it would be helpful and we could be more efficient</p> <p>12 and quicker if I put Post-Its on the various pages</p> <p>13 to get into the various issues so that if I needed</p> <p>14 to go through it I could do that.</p> <p>15 Q. And whose handwriting is on those</p> <p>16 Post-Its?</p> <p>17 A. Mine.</p> <p>18 Q. And is the content on those Post-Its -- is</p> <p>19 that your content that you wrote down?</p> <p>20 A. Yes.</p> <p>21 MS. PURACAL: Okay.</p> <p>22 Any other questions -- oh, actually, I</p> <p>23 should also clarify.</p> <p>24 BY MS. PURACAL:</p> <p>25 Q. When you said a minute ago that these were</p>

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<p style="text-align: right;">285</p> <p>1 not documents that you had in your file. Are you</p> <p>2 talking about at the time of trial these were not</p> <p>3 documents that you had in your file?</p> <p>4 A. Yes, that's what I'm saying.</p> <p>5 Q. And you also said that this was not</p> <p>6 information that you had. Are you saying at the</p> <p>7 time of the criminal trial this was not information</p> <p>8 that you had?</p> <p>9 A. Correct.</p> <p>10 MS. PURACAL: Okay.</p> <p>11 Any other questions?</p> <p>12 MR. DAVIS: I have -- I have a few.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15 BY MR. DAVIS:</p> <p>16 Q. This is, again, Jesse Davis. I'm going to</p> <p>17 move the mic. May I?</p> <p>18 Earlier today, Ms. McCrea, you discussed</p> <p>19 getting gas at what I think you called Gas Mart. I</p> <p>20 just wanted to clarify for the record. I wasn't</p> <p>21 familiar with a place called Gas Mart, although</p> <p>22 there's many marts that show up in the case.</p> <p>23 When you referred to this Gas Mart, are</p> <p>24 you talking about an unattended cardlock fueling</p> <p>25 station where someone can put in a card and get gas</p>	<p style="text-align: right;">287</p> <p>1 A. Yes.</p> <p>2 Q. -- as well?</p> <p>3 So you are not going to testify as to</p> <p>4 whether you understood them. Could you have</p> <p>5 understood them without the assistance of an expert?</p> <p>6 MS. PURACAL: Same objection.</p> <p>7 MR. DAVIS: I wanted to just make -- I</p> <p>8 guess come back to the boxes and just see, is there</p> <p>9 anything else we need to put on the record about the</p> <p>10 boxes to make sure that it's clear once we're no</p> <p>11 longer here together -- anything about them -- are</p> <p>12 you satisfied with what we've done so far? I just</p> <p>13 sort of felt like there was steps we might -- we</p> <p>14 talked about earlier and left out?</p> <p>15 MR. FRANZ: Well, for purposes of the</p> <p>16 record, they are going to look and see if they can</p> <p>17 find box 17 -- the 17th box.</p> <p>18 I don't know if I said it on the</p> <p>19 record or off the record. Once copies -- once I</p> <p>20 have a complete duplicate, any of the other</p> <p>21 attorneys, including the plaintiffs, can come and</p> <p>22 look at them in my office if they don't want to pay</p> <p>23 for a copy and they want to see what it actually</p> <p>24 looks like.</p> <p>25 Otherwise, I think we covered</p>
<p style="text-align: right;">286</p> <p>1 at any hour of the day without at that time the</p> <p>2 necessary attendant?</p> <p>3 A. I believe that's correct.</p> <p>4 Q. You testified about releasing a lien or</p> <p>5 settling sort of a disputed debt in the amount of --</p> <p>6 the release amount was \$58,000?</p> <p>7 A. Yes.</p> <p>8 Q. And you testified that 24,000 -- 24,000 of</p> <p>9 that went to you and 24,000 went to the Bonk --</p> <p>10 A. I mis -- I misstated myself, didn't I? 24</p> <p>11 and 24 is 48. Whatever 58 divided in half is.</p> <p>12 Q. Okay.</p> <p>13 A. Sorry. It's like --</p> <p>14 Q. So that would be 29,000 went to you and</p> <p>15 29,000 went to the Bonk firm?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you.</p> <p>18 Returning to the bench notes which were</p> <p>19 discussed yesterday in Deposition Exhibit 2, were</p> <p>20 you able to understand the content of those notes as</p> <p>21 you looked at them?</p> <p>22 MS. PURACAL: Objection. Asked and</p> <p>23 answered. Work product and privilege.</p> <p>24 BY MR. DAVIS:</p> <p>25 Q. Are you going to stand by those --</p>	<p style="text-align: right;">288</p> <p>1 everything except vendor. Do we need -- are you</p> <p>2 going to use a Eugene vendor?</p> <p>3 MS. PURACAL: I don't know the answer</p> <p>4 to that. That's something that our paralegal will</p> <p>5 figure out. So I don't know that we need to put</p> <p>6 that on the record.</p> <p>7 I can't think of anything else that we</p> <p>8 need to put on the record. If there's something</p> <p>9 that I'm missing, though, Mr. Davis please correct</p> <p>10 me.</p> <p>11 MR. DAVIS: I just recall we had a</p> <p>12 lengthy off the record discussion about it and</p> <p>13 worked out a few things. I just want to make sure</p> <p>14 that the necessary components of that make it onto</p> <p>15 the record.</p> <p>16 So I'm just sort of asking anybody to</p> <p>17 bring out what they recall that may be helpful.</p> <p>18 That's it.</p> <p>19 MS. PURACAL: I'm hoping that we got</p> <p>20 everything on the record. If we didn't, then we'll</p> <p>21 work it out between counsel.</p> <p>22 MR. DAVIS: Okay.</p> <p>23 And then last, I just wanted to return</p> <p>24 to Exhibit 38. I don't think we put that on the</p> <p>25 record sort of real affirmatively or what is going</p>

Shaun S. McCrea

<p style="text-align: right;">301</p> <p>1 there anything we haven't discussed yet about things</p> <p>2 you learned from review of the material in Exhibit</p> <p>3 38 that you did not previously know?</p> <p>4 A. I don't think so with regard to</p> <p>5 Ms. Wilcox.</p> <p>6 Q. Do you recall who John Riddle was from</p> <p>7 your work on the McGuffin case?</p> <p>8 A. Could you help me here?</p> <p>9 Q. Of course I can.</p> <p>10 A. I'm not --</p> <p>11 Q. But the question is do you have any</p> <p>12 independent recollection right now?</p> <p>13 A. I know the name. I can't put him in</p> <p>14 context.</p> <p>15 Q. So I'll represent to you that John Riddle</p> <p>16 is a defendant in this action and was a detective</p> <p>17 for the Oregon State Police who assisted in the</p> <p>18 investigation as it was renewed in the 2010 time</p> <p>19 period.</p> <p>20 A. Okay.</p> <p>21 Q. Does any of the material in this binder</p> <p>22 that we now have as Exhibit 38 -- does any of that</p> <p>23 material tell you anything you didn't know</p> <p>24 previously about Detective Riddle?</p> <p>25 A. I don't know. I'd have to go back and</p>	<p style="text-align: right;">303</p> <p>1 today you had referred to a Leah McGuffin. If</p> <p>2 that's correct, were you referring to Leah Freeman?</p> <p>3 A. I was -- I meant Leah Freeman. I think I</p> <p>4 meant Leah -- I was trying to say Leah, and -- I</p> <p>5 don't know. Anyway, yes, it should be Leah Freeman.</p> <p>6 MR. DAVIS: Okay. Thank you.</p> <p>7 No further questions. Thank you.</p> <p>8 MS. FURACAL: Any other questions?</p> <p>9 It does not appear so. I'm presuming</p> <p>10 that we can go off the record. Is there anything</p> <p>11 else, Mr. Franz? Mr. Davis?</p> <p>12 MR. FRANZ: No.</p> <p>13 MR. DAVIS: And we will get a copy of</p> <p>14 this with its Post-It notes as -- through the</p> <p>15 process that we just described?</p> <p>16 MS. FURACAL: Correct. And when you</p> <p>17 say "this," just for the record we're pointing to</p> <p>18 Exhibit 38.</p> <p>19 MR. DAVIS: Yes. Thank you.</p> <p>20 MS. FURACAL: And we'll read and sign.</p> <p>21 We can go off the record.</p> <p>22 THE VIDEOGRAPHER: Okay.</p> <p>23 Off the record at 11:44 a.m.</p> <p>24 (The deposition was adjourned</p> <p>25 at 11:44 a.m.)</p>
<p style="text-align: right;">302</p> <p>1 look through it all. If he wrote some of the notes</p> <p>2 or some of the reports, then, yes. If not, I don't</p> <p>3 remember him being directly referenced.</p> <p>4 Q. May I take one more look at the Exhibit 38</p> <p>5 before we --</p> <p>6 A. Can I say no?</p> <p>7 Q. Yeah, of course you can.</p> <p>8 (Pause.)</p> <p>9 Ms. McCrea, the only thing I can think of</p> <p>10 now is something we may have covered yesterday which</p> <p>11 is, were you aware at the time of the McGuffin trial</p> <p>12 that the gas tank in Mr. McGuffin's Mustang had a</p> <p>13 gas leak?</p> <p>14 MS. FURACAL: Objection. Asked and</p> <p>15 answered.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Go ahead.</p> <p>18 A. And I -- at this point I don't remember.</p> <p>19 Q. Okay.</p> <p>20 So you don't remember whether you knew at</p> <p>21 the time of trial? Is that -- is that the question</p> <p>22 you're answering?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 The last thing is I believe somewhere</p>	<p style="text-align: right;">304</p> <p>1 State of Oregon)</p> <p>2 County of Lane) ss.</p> <p>3</p> <p>4 I, Sara Fahey Wilson, CSR, a Certified Shorthand</p> <p>5 Reporter for the State of Oregon, certify that the</p> <p>6 witness was sworn and the transcript is a true</p> <p>7 record of the testimony given by the witness; that</p> <p>8 at said time and place I reported all testimony and</p> <p>9 other oral proceedings had in the foregoing matter;</p> <p>10 that the foregoing transcript consisting of 303</p> <p>11 pages contains a full, true and correct transcript</p> <p>12 of said proceedings reported by me to the best of my</p> <p>13 ability on said date.</p> <p>14 If any of the parties or the witness requested</p> <p>15 review of the transcript at the time of the</p> <p>16 proceedings, such correction pages are attached.</p> <p>17 IN WITNESS WHEREOF, I have set my hand this 15th</p> <p>18 day of December 2023, in the City of Eugene, County</p> <p>19 of Lane, State of Oregon.</p> <p>20</p> <p>21</p> <p>22 </p> <p>23 Sara Fahey Wilson, CSR</p> <p>24 CSR No. 06-0400</p> <p>25 Expiration Date: March 31st, 2026</p>

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on behalf
of S.M., a minor,

Case No. 6:20-CV-01163-MK

Plaintiff,

v.

**ORDER ON PLAINTIFFS'
MOTION TO MODIFY
SUBPOENA**

MARK DANNELS *et al.*,

Defendants.

KASUBHAI, United States Magistrate Judge:

BACKGROUND

Plaintiffs' action arises out of the wrongful conviction of Plaintiff Nicholas McGuffin. Pl.'s Sec. Am. Compl., ECF No. 143 ("SAC"). Plaintiff McGuffin was convicted in a 2011 action titled *State of Oregon v. Nicholas James McGuffin*, Coos County Circuit Court Case No. 10CR0782 (the "Criminal Case"). His conviction was vacated by judgment in November 2019,

and he was released from incarceration several weeks later. *See* Defs.’ Resp. to Mot. to Modify Subpoena of McCrea Ex. 101, ECF No. 211-1 (“Defs.’ Resp.”). In this action, Plaintiffs’ suit includes claims under § 1983 claims for the alleged fabrication of evidence and suppression of favorable evidence, and state law claims for negligent training and supervision and negligent spoliation of evidence. SAC 32-41, 45-46.

Attorney Shaun McCrea represented Plaintiff in the underlying Criminal Case which led to Plaintiff’s wrongful conviction. Pls.’ Mot. for Protective Order 2, ECF No. 207 (“Pls.’ Mot.”). In the present action, Plaintiffs requested and received from Ms. McCrea a complete copy of her file from the Criminal Case (the “McCrea File”). *Id.* After digitally scanning the documents, reviewing them for privilege, and producing a privilege log, Plaintiffs sent a digital copy of the McCrea file and privilege log to Defendants. *Id.* Plaintiffs withheld approximately 600 documents from the 35,000 pages of the McCrea file, asserting attorney-client privilege and work-product protection. Puracal Decl. Ex. 1, ECF No. 208 (“Privilege Log”). On September 8, 2023, the City/County Defendants¹ served Plaintiffs with a notice of intent to issue a subpoena *duces tecum* to Ms. McCrea, who is not a party in this matter, for “ANY AND ALL RECORDS relating to Nicholas James McGuffin.” Pls.’ Mot. 2. Defendants also sent Plaintiffs a notice of a subpoena to depose Ms. McCrea. *Id.*

In the present Motion (ECF No. 207), Plaintiffs move for a protective order modifying the scope of the subpoenas to prevent the disclosure of documents and information that they argue is protected by attorney-client privilege and the work product doctrine. *Id.* Defendants respond that Plaintiff McGuffin waived all privileges that relate to issues arising in this case. On

¹ Specifically, Defendants Mark Dannels, Pat Downing, Kris Karcher, Shelly McInnes, Raymond McNeely, Kip Oswald, Michael Reeves, Sean Sanborn, Eric Schwenninger, Chris Webley, Anthony Wetmore, Craig Zanni, David Zavala, City of Coquille, City of Coos Bay, Coos County, Oregon, and the Estate of David Hall. Herein after, “Defendants” for purposes of this Order.

October 18, 2023, the Court held a hearing on the Motion to Modify the Subpoena. *See* ECF No. 215.

For the foregoing reasons, the motion to modify the subpoena is GRANTED, in part.

LEGAL STANDARD

Fed. R. Civ. P. 26(b)(1) entitles each party to discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” The Court has broad discretion to determine relevancy for the purposes of Rule 26(b)(1). *Goolsby v. Raney*, 483 F. App’x 326, 329 (9th Cir. 2012). However, even if a discoverable matter is relevant, on timely motion, the issuing court must modify a subpoena that “requires disclosure of privileged or other protected matter, if no exception or waiver applies[.]” Fed. R. Civ. P. 45(d)(3)(A)(iii). Federal courts analyze the attorney-client privilege and work product protection separately. *Tennison v. City & Cty. of San Francisco*, 226 F.R.D. 615, 622 (N.D. Cal. 2005) (citing *United States v. Nobles*, 422 U.S. 225, 238 (1975) (“The work-product doctrine is distinct from and broader than the attorney-client privilege.”)).

DISCUSSION

I. Attorney-Client Privilege

“The attorney-client privilege protects confidential communications between attorneys and clients, which are made for the purpose of giving legal advice.” *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020) (citing *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)). The federal law of privilege applies in claims arising under a federal question. Fed. R. Evid. 501. The client may expressly or impliedly waive their attorney-client privilege. *United States v. Sanmina Corp.*, 968 F.3d 1107, 1116–17 (9th Cir. 2020). The party asserting privilege

has the burden of establishing the applicable privilege. *U.S. v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011).

Courts in the 9th Circuit use the three prong *Hearn* test to determine whether a party waived the attorney-client privilege by placing the information at issue in the case. *United States v. Amlani*, 169 F.3d 1189, 1195 (9th Cir. 1999) (citing *Hearn v. Rhay*, 68 F.R.D. 574, 581 (E.D. Wash. 1975)). Under the *Hearn* test, a plaintiff waives the privilege when (1) he takes an affirmative act, such as filing a suit; (2) his affirmative act puts the privileged information at issue; and (3) allowing the privilege would deny the defendant access to information vital to its defense. *Id.*

A. Plaintiffs' Claims Under *Brady*

In a *Brady* claim, the plaintiff must prove that the defendant withheld exculpatory evidence that he or his criminal defense attorney were unaware of at the time of the conviction. *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018); see *Brady v. Maryland*, 373 U.S. 83 (1963). The plaintiff or his criminal defense counsel's awareness of exculpatory evidence, including an awareness of witnesses who may have had exculpatory evidence, may be used by the defendant in the civil suit to defeat the *Brady* claim. *United States v. Dupuy*, 760 F.2d 1492, 1502 (9th Cir. 1985).

Here, Plaintiff McGuffin waived the attorney-client privilege as it relates to his or Ms. McCrea's awareness of facts that would defeat the *Brady* claim. The first and second prongs of the *Hearn* test are satisfied because Plaintiffs took the affirmative action of bringing a *Brady* claim. The third prong is satisfied because Plaintiff McGuffin or Ms. McCrea's awareness of exculpatory evidence at the time of the criminal conviction is vital to Defendants' affirmative defense of the *Brady* claim. Accordingly, Plaintiff McGuffin waived his privilege regarding

those facts. However, Plaintiff McGuffin did not waive his attorney-client privilege as it relates to his communications with Ms. McCrea and her opinions about that evidence.

B. Plaintiffs' State Law Negligence Claims

Plaintiffs allege negligent training and supervision of the Municipal Defendants (Fifth Claim for Relief) and negligent spoliation of evidence by all Defendants (Seventh Claim for Relief). Pls.' SAC ¶¶ 302-08, 314-19. Comparative fault is an affirmative defense to a state law claim for negligence. Or. Rev. Stat. § 31.600(1). Therefore, under *Hearn*, a claim for negligence may waive the attorney-client privilege as it relates to the plaintiff's or his attorney's comparative fault.

According to Defendants, Plaintiff McGuffin waived the attorney-client privilege and opened the door to the discovery of Plaintiff McGuffin and Ms. McCrea's comparative fault in negligently defending the Criminal Case. Defs.' Mot 5. To prove the affirmative defense of comparative fault, Defendants seek discovery of:

(1) What information Mr. McGuffin gave to Robert and Shaun McCrea about what investigation was needed, what witnesses needed to be contacted or interviewed, and what evidence needed to be found or asked for from the Defendants, including the District Attorney; (2) what witnesses or events gave Mr. McGuffin an alibi; (3) what witnesses knew who killed Leah Freeman or had information about her or Mr. McGuffin; (4) why Mr. McGuffin did not testify and who made the decision that he was not to testify; (5) whether or not certain witnesses should testify, like McGuffin's mother and father; (6) what information was provided by Mr. McGuffin about his killing Ms. Freeman; (7) what Mr. McGuffin said about the fact that McGuffin failed the polygraph examination; (8) why didn't Mr. McGuffin take a second polygraph test as offered by the District Attorney; (9) any accusations by anyone including McGuffin that his criminal defense attorneys were not doing their job or not working hard enough; (10) statements and information exchanged about the timeline McGuffin gave to the police and the timelines he gave to his attorneys; and (11), all information that was withheld from the

police, the grand jury, the jury, and/or the District Attorney and why.

Resp. to Pls.' Mot. to Modify Subpoena at 5-6. Defendants' proposed discovery far exceeds the scope of the allegations made in Plaintiffs' negligence claims.

Defendants overreach in their pursuit of discovery relating to their affirmative defense. The scope of discovery to which Defendants are entitled is defined by the terms of Plaintiffs' negligence claim, and not in the first instance, Defendants' affirmative defense. Defendants affirmative defense of negligent defense of the Criminal Case is not reasonably directed to Plaintiffs' negligence claims. Except for Plaintiff McGuffin or Ms. McCrea's *awareness* of exculpatory evidence that was allegedly withheld by Defendants, the Defendants' requested discovery is not relevant nor vital to their defense and fails prongs two and three of the *Hearn* test.

C. Privilege Waiver of Plaintiff McGuffin's Post Conviction Relief Proceeding

Defendants also argue that "Plaintiff McGuffin has waived all privileges related to all of the disclosures made by him or the McCreas in the post-conviction proceeding, which include McGuffin's contention that his attorneys committed malpractice. This includes all disclosures made and raised in the General Judgment of the post-conviction proceedings. . ." Defs.' Resp. 7. In response, Plaintiffs submit a copy of a Stipulated Protective Order signed by the court in Plaintiff McGuffin's post-conviction case, preventing the re-disclosure of material protected by attorney-client privilege and the work product doctrine. Puracal Supp. Decl. Ex. 4, ECF No. 212. At the discovery hearing held on October 18, 2023, Defendants did not provide a legal argument in support of their objection to the validity of the Stipulated Protective Order. The Court finds no reason to invalidate the Stipulated Protective Order in the post-conviction proceeding.

II. Work-Product Doctrine

Documents or the compilation of materials prepared by agents of the attorney in preparation for litigation may be covered by the work-product doctrine. *U.S. v. Richey*, 632 F.3d 559, 567 (9th Cir. 2011). The primary purpose of the work-product doctrine is to “prevent exploitation of a party’s efforts in preparing for litigation.” *Admiral Ins. Co.*, 881 F.2d at 1494. Like the attorney-client privilege, the protection of work product is also waivable. *Richey*, 632 F.3d at 567. Special protection is afforded to materials that reveal an attorney’s mental impressions and opinions (“opinion” or “core” work product). *Admiral Ins. Co.*, 881 F.2d at 1494; Fed. R. Civ. P. 26(b)(3)(B). Other materials, however, may be ordered produced upon a showing of substantial need for the information and that the information cannot be otherwise obtained without undue hardship. *Admiral Ins. Co.*, 881 F.2d at 1494; Fed R. Civ. P. 26(b)(3)(A)(ii). To obtain the opinion work product of an opposing party, a party must show that the mental impressions of counsel *are at issue* and the need for the material is compelling. *Holmgren v. State Farm Mutual Auto. Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992).

Plaintiffs argue that they have already produced all relevant, non-privileged documents from the McCrea file. Pls.’ Mot. 3. Plaintiffs’ privilege log shows that they have withheld approximately 600 documents from the McCrea File. Puracal Decl. Ex. 1, ECF No. 208. Defendants do not dispute whether the withheld documents are in fact within the scope of work-product protection. Rather, they argue that they are entitled to have a neutral party examine the withheld documents to determine if they are properly within the scope of protection from production and request the Court’s in-camera review of the documents or, in the alternative, the appointment of a Special Master. Defs.’ Resp. 4.

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The Court will review the withheld documents and determine which, if any, are not protected by the work-product doctrine, consistent with the reasoning in this opinion.

ORDER

For the reasons state above, Plaintiffs' Motion for Protective Order to Modify Subpoena (ECF No. 207) is GRANTED, in part. Defendants may ask Ms. McCrea about her awareness of facts pertinent to defeating Plaintiffs' *Brady* claims, including her awareness of witnesses at the time of conviction with exculpatory evidence. Defendants may not ask Ms. McCrea about her communications with Plaintiff McGuffin about those underlying facts. The Court ORDERS Plaintiffs to submit the withheld documents from the McCrea File to the Court for in-camera review within 30 days of this Order.

IT IS SO ORDERED.

DATED this 2nd day of November 2023.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge

*Discovery list***State v. McGuffin
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1. 2010 Search Warrant	1 – 66
2. Andrews	67 – 185
3. Andy Jackson	186 – 187
4. Anonymous Tips	188 – 193
5. Arnesen	194 – 218
6. Arrant	219 – 222
7. Assessor	223 – 239
8. Assmus	240 – 250
9. Autopsy	251 – 261
10. Background Materials	262 – 434
11. Barrett	435 – 438
12. Bartley Materials	439 – 563
13. Bennett	564 – 565
14. Bentley Materials	566 – 579
15. Benz	580 – 594
16. Bibb	595 – 597
17. Bob Van Zelf	598 – 612
18. Bohanon	613 – 622
19. Bonnie Chamley	623 – 624
20. Bowersox	625 – 630
21. Brenden	631 – 652
22. Bryant/McGuffin Jail Records	653 – 654
23. Charity Kinsey	655 – 656

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24. Child Fatality	657 – 662
25. Coos Bay Crime Lab	663 – 687
26. Correspondence	688 – 749
27. Cory Bryant	750 – 752
28. Court Documents	753 – 757
29. Crime Lab Notes	758 – 1014
30. Dannels	1015 – 1044
31. Dave Chappelle	1045 – 1049
32. Davis Work File	1050 – 1166
33. Davis	1167 – 1228
34. Denny Freeman Notes	1229 – 1233
35. Documents from Nick's Bedroom	1234 – 1284
36. Dog Team	1285 – 1288
37. Downing	1289 – 1362
38. Durbin	1363 – 1366
39. Ellen Bradley	1367 – 1369
40. Elzie Shamblin	1370 – 1489
41. England DNA	1490 – 1526
42. England Photos of Clothes	1527 – 1537
43. Evidence Room Documents	1538 – 1772
44. EWS001	1773 – 1786
45. FBI Violent Crime	1787 – 1796
46. Ferreria	1797 – 1802

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47. First Search Warrant	1803 – 1836
48. Forest Simpson	1837 – 1863
49. Garcia	1864 – 1877
50. Gish Port Orford PD	1878
51. Godfrey	1879 – 1881
52. Hall	1882 – 1910
53. Hebner	1911 – 1920
54. Hermann	1921 – 1950
55. James Bryant	1951 – 1952
56. January 2010 Press Release	1953 – 1957
57. Jeff Grant	1958 – 1961
58. Jeff Smith	1962 – 1964
59. John Riddle	1965 – 1968
60. King	1969 – 1976
61. Kinney	1977 – 1990
62. Kris Karcher	1991 – 1995
63. Kristen Steinhoff	1996 – 2033
64. Leader	2034 – 2035
65. Leads	2036 – 2043
66. Leah Funeral	2044 – 2050
67. Leah's Letters to Mitchell	2151 – 2069
68. Leah School Records	2070 – 2114
69. Lebanon PD	2115 – 2119

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70. Lee	2120 – 2132
71. Lichte	2133 – 2137
72. Looney	2138 – 2244
73. Lorretta Daugherty	2245 – 2246
74. Lower Umpqua Hospital	2247 – 2252
75. Mark Ranger	2253 – 2285
76. McBride	2286 – 2287
77. McCool	2288 – 2299
78. McGuffin (Nick) Materials	2300 – 2849
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80. Michael Miller	2866 – 2931
81. Mike Tabor	2932 – 2941
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83. Miscellaneous	2970 – 2991
84. Miscellaneous Crime Lab Reports	2992 – 3025
85. Mitts	3026 – 3029
86. Moore	3030 – 3031
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88. Nichols	3178 – 3196
89. Oester	3197 – 3231
90. Officer Bryant	3232 – 3233
91. Oswald	3234 – 3252
92. P & P	3253 – 3254

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93. Pat Smith	3255 – 3303
94. Patterson	3304 – 3320
95. PDX Crime Lab	3321 – 3335
96. Perske	3336 – 3366
97. Phone Records	3367 – 3414
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99. PMK001	3422 – 3546
100. Press	3547 – 3551
101. RBW001	3552 – 3557
102. RBW002	3558 – 3580
103. RBW003	3581 – 3715
104. RBW004	3716 – 3819
105. RBW005	3820 – 3830
106. Reaves	3831 – 3841
107. Remote Viewing	3842 – 3845
108. Riddle	3846 – 3858
109. Roach	3859 – 3907
110. Robbins	3908 – 3911
111. Sanborn	3912 – 3932
112. Schwenninger	3933 – 3948
113. Sean Sanborn	3949 -3959
114. Second Search Warrant	3960 – 4029
115. Sero	4030 – 4062

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116. Shelly Grant	4063 – 4079
117. Snyder	4080 – 4106
118. Snyder	4107
119. Soule	4108 – 4121
120. Springfield Lab	4122 – 4130
121. Statement Analysis	4131 – 4140
122. Stoddard/Wilsey Suicide	4141 – 4156
123. Stoddard Photos	4157- 4159
124. Stone	4160 – 4166
125. Summers	4167
126. Timeline	4168 – 4175
127. TRV	4176 – 4179
128. TSR001	4180 – 4335
129. TSR002	4336 – 5010
130. Ulmer	5011 – 5048
131. Unknown OSP Notes	5049 – 5054
132. Webb	5055 – 5086
133. Webley	5087 – 5137
134. West	5138 – 5139
135. Wetmore	5140 – 5154
136. Wright	5155 – 5156
137. Young	5157 – 5212
138. Zanni	5213 – 5414

**State v. McGuffin
Discovery List**

139. Zavada	5415 – 5437
140. Sanborn	5438 – 5455
141. Bill Sero	5456 – 5458
142. McGuffin Hawaii Property	5459 – 5467
143. Breakfield	5468 – 5469
144. Webley	5470 – 5481
145. Walker	5482 – 5486

Above documents delivered to Shaun McCrea in PDF Format on August 24, 2010.

146. Dannels(2)	5487 – 5489
147. Letters to Court	5490 – 5491
148. Polygraph Reports on Stemmermann and Zavala	5492 – 5504
149. Webley(3)	5505 – 5518

The above four items were transmitted to the McCrea Law Firm by electronic mail on October 6, 2010.

150. Jail Incident	5519 – 5528
151. Ranger Polygraph Charts on McGuffin	5529 – 5538
152. Ranger File on McGuffin Polygraph	5539 – 5550

The above three items were transmitted to the McCrea Law Firm by electronic mail on November 24, 2010.

153. Vidoq Society Materials	5551 – 5674
154. Grand Jury Subpoenas	5675 – 6060
155. Sherida Hendricks	6061 – 6063
156. Reader's Digest Article on Walters	6064 - 6075

**State v. McGuffin
Discovery List**

The above four items (153, 154, 155, 156) were sent in digital format to the McCrea Law Firm on December 20, 2010.

157. Lab Report dated 10/26/2010	6076 – 6079
158. Pat Smith Report	6080
159. Looney Report	6081 – 6083
160. Pat Smith Report	6084
161. Email's regarding "Valerie"	6085 – 6086

The above five items and CD058 were mailed to the McCrea law firm March 8, 2011.

162. Lab report dated November 10, 2010	6087 – 6089
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The above item was mailed to the McCrea law firm March 8, 2011.

**DUE TO A MISTAKE IN NUMBERING THE FOLLOWING
DISCOVERY ITEMS WERE RENUMBERED AND SENT TO
THE MCCREA LAW FIRM ON APRIL 27, 2011.**

163. Brenden Notebooks	6090 – 6385
164. Car Registrations	6386 – 6388
165. Dannels Report	8389 – 6392
166. Dave Hall Deschutes County Reports	6393 – 6674
165. England Shipping Records	6675 – 6677
166. Evidence Accountability Sheets	6678 – 6710
167. Evidence Log	6711 – 6716
168. Forensic Request Forms	6717 – 6725
169. Lab Submission Forms	6726 – 6779
170. Leah Medical Records	6780 – 6811

**State v. McGuffin
Discovery List**

171. Lloyd Report	6812
172. McGuffin Trial Subpoenas	6813 – 6966
173. McNeely	6967 – 6974
174. Microtrace Reports	6975 – 6981
175. Mini-Storage Records	6982 – 6983
176. Miscellaneous Documents	6984 – 6999
177. Mustang Evidence Sheets	7000 – 7004
178. Nichols Notebook	7005 – 7196
179. Note from Henry Echol (?)	7197 – 7198
180. Overview Maps from Google	7199 – 7204
181. Randy Ulmer Materials	7205 – 7303
182. Receipt to the McGuffins	7304
183. Sanborn Report	7305 – 7312
184. Sero Evidence Sheet	7313 – 7328
185. Smith Report	7329 – 7330
186. Webley Report	7331 – 7333
187. Zavala Notebooks	7334 – 7833

The following were sent to the McCrea Law Firm on May 2, 2011.

188. Criminal Histories on civilian witnesses	7834 – 8195
189. Kristen Steinhoff Polygraph	8196 – 8207
190. Leah Death Certificate	8208
191. McNeely Report	8209 – 8210
192. Webley Report	8211 – 8216

**State v. McGuffin
Discovery List**

193. Kyla Stevens Letter	8217 – 8221
194. Sanborn Sherida Hendricks Report	8222 – 8229
195. Steven's Letter to defendant	8230 – 8231
196. Hamilton Polygraph Report	8232 – 8241
197. Webley Report	8242 – 8248
198. Copies of Bonk reports with witness corrections	8249 – 8276
199. Webley Report Received 6-24-2011	8277 – 8279
200. Coos Bay Crime Lab File and Photos	8280 – 8380
201. Photos of High School and North Elm	8381 - 8409
202. McNeely Report 6-29-2011	8410 (rp)
203. Webley Report 6-30-2011	8411 – 8414 (rp)
204. Copies of Bonk reports C & P Mitchell witness correct. Note: Bates 8434 missed. Added Blank Pg	8414 – 8437 (rp)

**State v. McGuffin
Discovery List**

CD's and DVD's

CD's

CD001- Coquille Exhibits 256, 38, 69, 258, 270, OSP Lab Photos, Nick McGuffin Photos, Cemetery, Crime Scene
CD002- Coquille Exhibits 72, search Warrant 2000 McGuffin Home
CD003- Coquille Exhibits 197, 75, 73, CPM003, Car Photos Leah's Memorial
CD004-Kip Oswald Photos
CD005-Autopsy Photos
CD006-Photos of car (Mundell matter?)
CD007-Photos 92834 Libby Drive
CD008-Kris Karcher scene and autopsy photos
CD009-Napier Photos
CD010-Kip Oswald Polaroid Photos
CD011- Photos seized from McGuffin Home #1
CD012- Photos seized from McGuffin Home #2
CD013- Photos of OR Lic #UTJ480
CD014- Photos of Mustang
CD015- Photos seized from McGuffin Home #3
CD016- Photos McGuffin Person, T-Bird and Scene
CD017- Photos McGuffin SW, cars at memorial, Nick and Leah
CD018- Timeline and tips
CD019- OSP Lab PDF files
CD020- Photos Mundell matter
CD021- Audio of mini-phone tape
CD022- Audio Nick McGuffin
CD023- Audio Kristen Steinhoff
CD024- Audio DA Frasier Phone Messages 01/29/2010
CD025- Audio Edgerton Pre-text call
CD026- Reaves/Hall interview of Nick McGuffin
CD027- OSP Lab Photos of Seized Evidence
CD028- Audio Brent Bartley Interview 1/24/2010
CD029- Skipped Number (no disc)
CD030- Audio Kristen Steinhoff Interview
CD031- Audio Nicole Price (Nelson) Interview
CD032- Looney Photos of Elderkin KIA
CD033- Looney Photos of Evidence
CD034- Stoddard Suicide Photos
CD035- John Lundgren Photos
CD036- Damon Mason Interview
CD037- Kristen Steinhoff Interview
CD038- Bruce McGuffin Pretext Call
CD039- Brent Bartley Interview 01/24/2010
CD040- Brent Bartley Interview 03/04/2010 and Kristen Steinhoff Interview

**State v. McGuffin
Discovery List**

03/04/2010

CD041- Hank Allerd Interview
CD042- Kristen Steinhoff Interview June 17, 2010
CD043- Leah Freeman Grand Jury Audio File July 14, 2010
CD044- Leah Freeman Grand Jury Audio File July 21, 2010 AM
Testimony
CD045- Leah Freeman Grand Jury Audio File July 21, 2010 PM
Testimony
CD046- Leah Freeman Grand Jury Audio File July 23, 2010 AM
Testimony
CD047- Leah Freeman Grand Jury Audio File July 23, 2010 PM
Testimony
CD048- Leah Freeman Grand Jury Audio File July 30, 2010 AM
Testimony
CD049- Leah Freeman Grand Jury Audio File July 30, 2010 PM
Testimony
CD050- Leah Freeman Grand Jury Audio File August 3, 2010
CD051- Leah Freeman Grand Jury Audio File August 4, 2010 AM
Testimony
CD052- Leah Freeman Grand Jury Audio File August 4, 2010 PM
Testimony
CD053- Leah Freeman Grand Jury Audio File August 11 2010 AM
Testimony
CD054- Leah Freeman Grand Jury Audio File August 11, 2010 PM
Testimony
CD055- Kristen Steinhoff Interview February 14, 2002
CD056- Kyla Stevens Interview
CD057- Willis and Walker Photos and Diagram of Courtright home
CD058 – Autopsy Photos
CD059 – Tulles Interview
CD060 – Randy Ulmer Interview
CD061 – Discovery #'s 6070 – 7532
CD062 – Photos of Bartley Grandparents' home
CD063 – Photos from CPM003 not previously disclosed and Photos from
Coquille Tag #20 not previously disclosed
CD064 – Zavala Recording with Kristen Steinhoff

Items CD059 – CD064 were mailed to the McCrea law firm on March 16, 2011.

CD065 – Discovery #9536 - 7606

Item CD065 was mailed to the McCrea law firm on April 6, 2011

CD066 – Discovery # 7621 – 7774

Item CD066 was mailed to the McCrea Law Firm on April 8, 2011

**State v. McGuffin
Discovery List**

**DUE TO A NUMBERING MISTAKE Items on CD's 61, 65
and 66 are now on CD067**

CD067 - Discovery #6090 – 7833

CD068 – Discovery #7834 – 8216
Scott Hamilton Interview of April 29, 2011

CD068 was sent to the McCrea Law Firm on May 2, 2011.

CD069 – Coos Bay Crime Lab File and Photos
Photos of High School and North Elm

CD069 was sent to the McCrea Law Firm on June 27, 2011

**State v. McGuffin
Discovery List**

DVD's

DVD001-Interview of Aubrey Schroder
DVD002-Brent Bartley Grand Jury Testimony WMV Format
DVD003-Brent Bartley Grand Jury Testimony DVD Format
DVD004-Video of Memorial Book Signing, DVD Format #1
DVD005-Video of Memorial Book Signing, DVD Format #2
DVD006-Video of Memorial Book signing WMV Format
DVD007-Video Freeman Grand Jury 2000 DVD Format
DVD008- Search Warrant 56246 Baker Road
DVD009- Lee Interview of Kristen Steinhoff
DVD010- Video Freeman Grand Jury July 14, 2010 DVD Format
DVD011- Video Freeman Grand Jury July 21, 2010 DVD Format #1
DVD012- Video Freeman Grand Jury July 21, 2010 DVD Format #2
DVD013- Video Freeman Grand Jury July 21, 2010 DVD Format #3
DVD014- Video Freeman Grand Jury July 21, 2010 DVD Format #4
DVD015- Video Freeman Grand Jury July 21, 2010 DVD Format #5
DVD016- Video Freeman Grand Jury July 23, 2010 DVD Format #1
DVD017- Video Freeman Grand Jury July 23, 2010 DVD Format #2
DVD018- Video Freeman Grand Jury July 23, 2010 DVD Format #3
DVD019- Video Freeman Grand Jury July 23, 2010 DVD Format #4
DVD020- Video Freeman Grand Jury July 23, 2010 DVD Format #5
DVD021- Video Freeman Grand Jury July 23, 2010 DVD Format #6
DVD022- Video Freeman Grand Jury July 30, 2010 DVD Format #1
DVD023- Video Freeman Grand Jury July 30, 2010 DVD Format #2
DVD024- Video Freeman Grand Jury July 30, 2010 DVD Format #3
DVD025- Video Freeman Grand Jury July 30, 2010 DVD Format #4
DVD026- Video Freeman Grand Jury July 20, 2010 DVD Format #5
DVD027- Video Freeman Grand Jury August 3, 2010 DVD Format
DVD028- Video Freeman Grand Jury August 4, 2010 DVD Format #1
DVD029- Video Freeman Grand Jury August 4, 2010 DVD Format #2
DVD030- Video Freeman Grand Jury August 4, 2010 DVD Format #3
DVD031- Video Freeman Grand Jury August 4, 2010 DVD Format #4
DVD032- Video Freeman Grand Jury August 4, 2010 DVD Format #5
DVD033- Video Freeman Grand Jury August 11, 2010 DVD Format #1
DVD034- Video Freeman Grand Jury August 11, 2010 DVD Format #2
DVD035- Video Freeman Grand Jury August 11, 2010 DVD Format #3
DVD036- Video Freeman Grand Jury August 11, 2010 DVD Format #4
DVD037- Video Freeman Grand Jury August 11, 2010 DVD Format #5
DVD038- Video Freeman Grand Jury August 11, 2010 DVD Format #6
DVD039- Video Freeman Grand Jury August 11, 2010 DVD Format #7

The above CD's and DVD's were mailed to the McCrea law firm on August 27, 2010.

DVD040 – Copy of VHS video tape from Henry Echoll(?)

**State v. McGuffin
Discovery List**

The above DVD was mailed to the McCrea law firm on March 16, 2011.

DVD041 – Video of intersection of Fairview – McKinley Road with Hudson
Ridge Road to location where shoe was found by Kip Oswald

The above DVD was mailed to the McCrea law firm on May 25, 2011.

DVD042 – Scott Hamilton, Megan Davidson, Tony Giang Phone Search,
Webley Report received 6-24-2011, Updated Discovery List

The above was mailed to the McCrea Law Firm June 24, 2011.

The above lists are current as of June 27, 2011.

From: Hormann, Susan [/O=OSP/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SUSAN HORMANN944]
Sent: 3/15/2010 11:50:08 AM
To: Psmith@cityofcoquille.org
CC: Grover, Celeste [Celeste.Grover@state.or.us]; Rose, Traci [Traci.Rose@state.or.us]
Subject: Re: FBI Mito testing in Leah Freeman Case

Lt. Smith,

I have attached the questions from the FBI. I know the DA wants the hairs done because the defense would make an issue if they are not examined. I know you have years of experience doing investigations and I do not want to step on your toes, but I want to be clear in the ramifications of your lab requests. Often people are unaware that hairs can be so easily transferred by direct contact or even through a secondary transfer. The following are topics to consider before proceeding with the trace evidence.

#1 The value of an association with anyone she has been known to have frequent or sustained contact with is minimal since we are unable to say when the hairs were transferred. In other words it has limited probative value to find her boyfriend's hairs or hairs of people that she has had previous contact with, especially recent.

#2 You are almost guaranteed to find foreign hairs in a trace exam. This ends up giving the defense the bushy haired stranger they are looking for.

#3 Trace can also be of great value if say pubic hairs from an individual are found on the interior clothing of a victim or a significant number of hairs that are consistent with coming from an individual that was a complete stranger to the victim or her associates. Also, hairs would be more probative if they are found in her hand or if in a clump. Another type of trace evidence to consider in this case would be fibers found on her clothing/body that are similar (or dissimilar) to that found in suspects' vehicle or trunk if Leah was never in the car prior to her disappearance.

From Les McCurdy at the FBI:

What is the potential probative value of the hairs? Do you have any info regarding what may have occurred to these items at New Scotland Yard (NSY) and Microtrace? I would expect that Microtrace conducted a microscopic exam with no other analysis but want to better understand how these items may have been handled or treated. What did NSY attempt? Unfortunately, until I have a better understanding of what changed between 2000 to present – especially if the 2000 exam revealed "nothing of forensic significance". Are there DNA reference samples from the victim and 2 subjects?

In the end, should we determine that the examinations are worth pursuing we can potentially submit this case through our Regional mtDNA program. We can further discuss that after we determine how/if to proceed. I will wait to hear back from you regarding the work done by Scotland Yard & Microtrace. I would prefer to keep you as the conduit with the local investigators as you already have been in touch with them and have provided previous guidance.

Once we are able to answer the questions asked by the FBI, we can proceed. Thank you.

Susan Torris Hormann
DNA Supervisor
Portland Forensic Laboratory
13309 SE 84th Ave, Suite 200
Clackamas, Oregon 97015
Direct No. 971-673-8258
Fax 971-673-8309

>>> "Pat Smith" <psmith@cityofcoquille.org> 3/9/2010 4:57 PM >>>

Susan,

Sorry I didn't get back to you sooner. As soon as I get the evidence back from Scotland Yard I'll look to see what kind of report they include. Also, I'll check with Kris Karcher and see if she has anything.

Thanks,

Pat

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OSP002584

H81 003247		003247		Form #60 (Rev. 8/88)	
WHITE — MASTER YELLOW — WORKSHEET CARD — FILE		OREGON STATE POLICE		PRIORITY A	B
C					
SUBJECT INFORMATION MAKE NO MARKS IN THIS AREA					
LAST NAME Backman, Nick		FIRST NAME J.		DEPT.	SID
NICKNAME OR ALIAS		SOC. SEC. #		FILE NUMB	
HOME ADDRESS P.O. Box 3045		CITY Coq	STATE OR	ZIP	HOME PHONE
OLD ADDRESS(ES) (425 toward Gaudon)		GLASSES		FACIAL HAI	
EMPLOYER/ADDRESS		CITY	STATE	WORK PHONE	OCCUPATION
RACE	SEX	D.O.B. 1/24/77	PLACE OF BIRTH	AGE	HEIGHT
DR. LIC. # E03ALP	STATE	VEH. YR. 67	MAKE Chev.	MODEL	COLOR(S) Blue
VEH. LIC. #	STATE	CONDITION/EQUIP.		OTHER VEH/PLATE(S)	
CONCISE TIP INFORMATION				SOURCE NAME/XREF McGuffin	
Suppose to have seen Leah @ Credit Union on night of 6/28					
SOURCE INFORMATION MAKE NO MARKS IN THIS AREA					
LAST NAME		FIRST NAME		MIDDLE NAME	A.K.A.s
RACE	SEX	D.O.B.	HEIGHT	WEIGHT	HAIR
ADDRESS		CITY		STATE	ZIP
HOME PHONE	WORK PHONE		DEPT.	DEPT. #	SID
ADDITIONAL INFORMATION					SUSPECT NAME
WAS INTERVIEWED @ 1352 ON 09-20-00. Believes he did see victim on 06/28/00 at 2100 when using ATM at Credit Union. CHECKED with Credit Union and confirmed a 10.00 withdrawal on 6/28/00 at 9:04 P.M. RP believes LEAH walked by AT that time. He described her clothes accurately. He then went to fast mart to get something to eat. He stated there was hardly anyone around at EAST MART. <i>Le Fan</i>					
RECEIVED BY <i>[Signature]</i>	DATE 9-20-00	TIME 1352	COMPUTER CHECK BY	DATE	TIME
ASSIGNED TO <i>[Signature]</i>	DATE 9/20/00	TIME 1352	CCH	CRIS	NCIC
003247 <i>Zanni</i>	SUSPENSE DATE 003247 9/20/00 1352	003247		003247	

Backman

Hjördis^A Lindegren S-19-10 e library
 7-8-58 S41-396-2258 290-6216
 SSI W. 4th Pl. 22 yrs.

1300

- Arab survivor fan.
- Watching survivor on TV. - Brother over w/ dog.
 - ~~- Night Rush, got voted off. Upset - wrong people~~
 - watched till end of show. Brother got up - took dog for walk. Got back.
 - Returned 1/2 hr. later.
 - Left around 2100 - returned approx. 2130.
 - May have left a few minutes before end but after Rudy was off.
- Recall John commenting about "uncontrollable juveniles" after coming back. Leah yelling at somebody.
- Neighbor, Dez, told Hjördis Leah in fight w/ people in house.

* Neighbor

- Dez Couch / wife Barbara - daughter lives w/ house now
- daughter:
 - Elm / W. 4th Pl. facing Elm 446 N. Elm
 - ~~410 63~~ 91063 N. Bank - Crockett
- John stopped / talked w/ Dez for while. Continued walk & passed people in front of house (Leah / Rick).

Lindegren

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Survivor: Borneo - Wikipedia, the free encyclopedia

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Survivor: Borneo

From Wikipedia, the free encyclopedia
(Redirected from Gretchen Cordy)

Survivor: Borneo is the first season of the United States reality show *Survivor*. It was originally broadcast under the name *Survivor* but its official title has been changed to *Survivor: Borneo* to distinguish it from subsequent installments of the series. Before the change to *Survivor: Borneo*, the season was known universally as *Survivor: Pulau Tiga*, but it was changed again to its present title to avoid confusion with the tenth season,


Survivor: Palau.^[1] The show began filming on March 13, 2000 and ended on April 20, 2000. It aired later that year on CBS. It was set in the South China Sea on the remote Malaysian island of Pulau Tiga in the state of Sabah, about 6 miles (9.7 km) off the north coast of Borneo, Malaysia. The show was released on DVD on May 11, 2004.^{[1][2]}

The sixteen contestants were initially separated into two tribes, named Tagi and Pagong, which represented the names of their beaches.^[1] When ten players remained, the contestants merged into one tribe, named Rattana. While Tagi and Pagong's names and makeups were picked by the producers, Rattana was named by contestants Sean Kenniff and Jenna Lewis, because of the large amount of Rattan wood on the island. After 39 days of competition, corporate trainer Richard Hatch was named the Sole Survivor, defeating whitewater rafting guide Kelly Wiglesworth in a 4–3 jury vote. In 2006, it was revealed that Hatch failed to declare his winnings, among other earnings, in his tax return and was sentenced to 51 months imprisonment.^[3]

On August 23, 2000, the *Survivor: Borneo* finale received the highest ratings of any *Survivor* episode to date.^[4] Richard Hatch, Jenna Lewis, Rudy Boesch, Susan Hawk and Colleen Haskell were invited to participate again in the eighth season of *Survivor*, *Survivor: All-Stars*. Haskell was the only one to turn down the opportunity,^[5] while Hatch, Lewis, Boesch and Hawk placed 14th, 3rd, 17th and 13th respectively.

Contents

- 1 Summary
- 2 Contestants
- 3 The game

<i>Survivor: Borneo</i>	
	
Filming location	Pulau Tiga, Sabah, Borneo, Malaysia
Winner	Richard Hatch (4–3)
Original run	May 31, 2000 – August 23, 2000
Filming dates	March 13, 2000 ^[1] – April 20, 2000
No. of episodes	13
No. of days	39
No. of survivors	16
Tribes	<input type="checkbox"/> Tagi <input type="checkbox"/> Pagong <input type="checkbox"/> Rattana
All-Stars	Richard Hatch, Rudy Boesch, Susan "Sue" Hawk, Jenna Lewis
Season chronology	
Next	Survivor: The Australian Outback

} Wednesday
nights

http://en.wikipedia.org/wiki/Subject CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD 020603

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- 3.5 Episode 5: Pulling Your Own Weight
- 3.6 Episode 6: Udder Revenge
- 3.7 Episode 7: The Merger
- 3.8 Episode 8: The Name Is Duplicity
- 3.9 Episode 9: Old and New Bonds
- 3.10 Episode 10: Crack In the Alliance
- 3.11 Episode 11: Long Hard Days
- 3.12 Episode 12: Death of an Alliance
- 3.13 Episode 13: Season Finale

- 4 Voting history
- 5 Production
- 6 Reception
- 7 DVD release
- 8 References
- 9 External links

Summary

The series premiere began with sixteen people split into two boats, divided into two tribes, Pagong and Tagi. During the first night, neither tribe had a completed shelter or a fire. On day two, after losing the combined reward and immunity challenge, Tagi was sent to Tribal Council, where Sonja Christopher was the first contestant voted out of the game. The tribes then continued to build their shelters and search for food. At the Tagi camp, former Navy SEAL, Rudy Boesch and openly homosexual corporate trainer Richard Hatch formed a strong friendship while B.B. Anderson became an annoyance at the Pagong camp. At the second immunity challenge, contestants were forced to eat a typical Malaysian food called Butok, which is the live larva of a beetle. Both tribes were in a tie after every castaway ate the Butok without refusing. In the tiebreaker, Stacey Stillman ate two Butok before Gervase Peterson, winning immunity for Tagi and sending Pagong to Tribal Council. At Tribal Council on day six, B.B. was sent home from the Pagong tribe. Tagi won the next reward challenge on day seven, winning fishing and diving gear. Richard used the tools to catch many fish and feed the Tagi tribe. Pagong caught and ate a rat, after roasting it first. Pagong won the next immunity challenge on day nine and Stacey was the third person voted out. Gretchen became the motherly tribe member of Pagong, and Rudy became the cook at Tagi, cooking the fish that Richard would catch. Tagi would win both the reward challenge on day ten and the immunity challenge on day twelve, sending Pagong to Tribal Council, where Ramona Gray was the next person voted out.

Their walk through the jungle at night to the Tribal Council will be an hour trek punctuated by stops to wait for six-foot-long snakes to writhe off the trail. Their bodies will be covered with bug bites as they sleep on the sand or in the jungle. They will catch rats to supplement the diet of rice and water provided.

Mark Burnett, *Survivor: The Ultimate Game* — Page 12

At the following reward challenge on day 13, Pagong won fresh fruit and three egg-laying chickens. Pagong also won the immunity challenge on day 15, as Dirk Been was voted off of the Tagi tribe. After winning the reward challenge on day 16, yet losing the immunity challenge on day 18, Joel Klug was voted off of the Pagong tribe. As the merge approached, Sean Kenniff and Jenna Lewis spent time creating guidelines for the new tribe. The merged tribe was named Rattana, and continued to live at the former Tagi beach. After the first individual immunity challenge on day 21, Greg Buis

won immunity for Tribal Council. Gretchen Cordy was then voted out, being tagged as the "biggest overall threat." During the following episode on day 22, each castaway except Jenna was shown a one-minute video clip, that either a family member or friend recorded of themselves talking to the contestant.

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Jenna's video was never received, so she was unable to view it. The winner of the reward challenge would get to watch the remainder of their five-minute video. Greg won, and was able to watch the rest of his video. Gervase Peterson won the immunity challenge on day 24, and Greg was voted off. During this episode, Sean developed his "alphabet strategy," where his vote would go in alphabetical order for the duration of his time in the game.

Colleen Haskell would win the next reward challenge on day 25, which was a barbecue dinner for two contestants, and would receive their letters sent by family members or friends at home. Colleen chose Jenna to come to the dinner with her, allowing Jenna to read her letter as well. At the dinner, Colleen and Jenna formed an alliance, and discussed getting Gervase to join them. Gervase agreed, but the three did not have enough votes on their side, as Jenna was the next to be voted off on day 27, with Rudy holding immunity. During the following episode, Gervase was informed that his first son, Gunnar was born. Coincidentally, Gervase won the following reward challenge on day 28, allowing him a phone call home. Richard, however, won immunity on day 30, and Gervase was voted out. Following this, Kelly Wiglesworth decided against working with her alliance of Sue Hawk, Richard, and Rudy anymore. The next reward challenge was won by Sean on day 31, who won a night on a luxury yacht. Little did Sean know until long after getting on the boat that the Captain was his father (Jim Kenniff) who would travel on the yacht with him. Richard joined Sean for breakfast on the yacht the next morning, as Richard was chosen by Sean after the reward challenge. After deciding that if Kelly failed to win immunity, she would be sent home by her former alliance. Kelly won the immunity challenge, and Colleen was voted off on day 33. Kelly continued to win the following reward challenge on day 34. Joined by the show's host, Jeff Probst, Kelly won a night at a bar with a hot meal, a cold beer, and a 5-minute screening of the first episode of *Survivor*. Kelly also won the immunity challenge on day 36, holding off her elimination again, as the tension between herself and Sue grew stronger. Kelly voted with her former alliance to vote Sean out of the game.

As the final three days at the island came, Kelly won immunity again on day 37. The immunity challenge involved the final four contestants being quizzed on how much they knew about their former tribe mates. At Tribal Council, Richard and Sue tied with two votes each. As Kelly and Rudy voted again, Kelly switched her vote to Sue, as Sue was the next voted out. At the final immunity challenge on day 38, Kelly, Richard, and Rudy had to place one hand on the immunity idol held on a pole in the middle of a small well, while the three stood on small stands surrounding the pole. Richard voluntarily stepped out of the challenge on the assumption that the other contestants would "be crazy not to take [him]" to the final Tribal Council. After four hours and eleven minutes, Rudy accidentally removed his hand when changing his position, giving Kelly another victory. Kelly chose Richard to take to the final two, as she voted Rudy off. After Kelly and Richard pleaded their cases with the jury, each jury member cast a vote for one of the final two contestants. The votes were read during the final Tribal Council on day 39, unlike in every season thereafter, when votes were read months later during a live finale. Richard won the first \$1 million prize with four votes to Kelly's three.

The victory was an extraordinary feeling-I think mostly of relief but certainly of exultation as well. Its surrealness was increased by how utterly depleted I felt. I was exhausted, mentally and physically, and starving. I remember walking around the wrap party thinking that it was done. I'd done what I'd come to do and I could relax. I couldn't wait to go to bed. It felt great and I slept like a baby.

Richard Hatch, *Survivor: The Ultimate Game*
— Page 227

Contestants

There were sixteen contestants overall, divided into two tribes, Pagong and Tagi. After six contestants were eliminated, the tribes were combined, or merged, to form one tribe, Rattana. Seven contestants made up the jury, who ultimately decided who would win the game, and the \$1 million grand prize.

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Contestant	Original Tribe	Merged Tribe	Finish	Total Votes ^[A]
Sonja Christopher 63, Walnut Creek, CA	Tagi		1st Voted Out Day 3	4
B.B. Andersen 64, Mission Hills, KS	Pagong		2nd Voted Out Day 6	6
Stacey Stillman 27, San Francisco, CA	Tagi		3rd Voted Out Day 9	6
Ramona Gray 29, Edison, NJ	Pagong		4th Voted Out Day 12	6
Dirk Been 23, Spring Green, WI	Tagi		5th Voted Out Day 15	4
Joel Klug 27, Sherwood, AR	Pagong		6th Voted Out Day 18	4
Gretchen Cordy 38, Clarksville, TN	Pagong		7th Voted Out Day 21	4
Greg Buis 24, Ridgewood, NJ	Pagong		8th Voted Out 1st Jury Member Day 24	6
Jenna Lewis 22, Franklin, NH	Pagong		9th Voted Out 2nd Jury Member Day 27	11
Gervase Peterson 30, Willingboro, NJ	Pagong		10th Voted Out 3rd Jury Member Day 30	6
Colleen Haskell 23, Miami Beach, FL	Pagong		11th Voted Out 4th Jury Member Day 33	7
Sean Kenniff 30, Carle Place, NY	Tagi		12th Voted Out 5th Jury Member Day 36	9
Susan "Sue" Hawk 38, Palmyra, WI	Tagi		13th Voted Out 6th Jury Member Day 37	5
Rudy Boesch 72, Virginia Beach, VA	Tagi		14th Voted Out 7th Jury Member Day 38	8
Kelly Wiglesworth 22, Las Vegas, NV	Tagi		Runner-Up	0
Richard Hatch 39, Middletown, RI	Tagi		Sole Survivor	6

The game

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Episode title ^[6]	Air date ^[6]	Challenges ^[B]		Eliminated	Vote	Finish
		Reward	Immunity			
"The Marooning"	May 31, 2000	Pagong ^[C]		Sonja	4–3–1	1st Voted Out Day 3
"The Generation Gap"	June 7, 2000	Pagong ^[D]	Tagi	B.B.	6–2	2nd Voted Out Day 6
"Quest for Food"	June 14, 2000	Tagi	Pagong	Stacey	5–2	3rd Voted Out Day 9
"Too Little, Too Late?"	June 21, 2000	Tagi	Tagi	Ramona	4–2–1	4th Voted Out Day 12
* "Pulling Your Own Weight"	June 28, 2000	Pagong	Pagong	Dirk	4–1–1	5th Voted Out Day 15
"Udder Revenge"	July 5, 2000	Pagong	Tagi	Joel	4–2	6th Voted Out Day 18
"The Merger"	July 12, 2000	None ^[F]	Greg	Gretchen	4–1–1–1–1–1	7th Voted Out Day 21
"Thy Name Is Duplicity"	July 19, 2000	Greg	Gervase	Greg	6–3	8th Voted Out 1st Jury Member Day 24
"Old and New Bonds"	July 26, 2000	Colleen, [Jenna]	Rudy	Jenna	4–3–1	9th Voted Out 2nd Jury Member Day 27
"Crack In the Alliance"	August 2, 2000	Gervase	Richard	Gervase	5–2	10th Voted Out 3rd Jury Member Day 30
"Long Hard Days"	August 9, 2000	Sean, [Richard]	Kelly	Colleen	4–2	11th Voted Out 4th Jury Member Day 33
"Death of an Alliance"	August 16, 2000	Kelly	Kelly	Sean	4–1	12th Voted Out 5th Jury Member Day 36
* "Season Finale"	August 23, 2000	None	Kelly	Susan ^[E]	2–2	13th Voted Out 6th Jury Member Day 37
			Kelly	Rudy	1	14th Voted Out 7th Jury Member Day 38
		Jury Vote		Kelly Richard	4–3	Runner-Up Sole Survivor

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Episode 1: The Marooning

- **Reward/Immunity Challenge:** Quest for Fire! The tribes swam to a raft where they had to pass and light their bamboo torch. Once they got to the beach they had to lift up their raft and run to the big statue. On the way, there were torches that needed to be lit. Once all of the torches are lit, teams had to light up a fire bowl. First tribe to light up the bowl wins immunity.
- **Reward:** Water proof matches.

16 castaways began an adventure of a lifetime. There were already separated into two tribes. Both tribes made it to their beaches: Tagi in 2 hours, Pagong in 3. At the Tagi tribe, Rudy got on everybody nerves by taking command. No one at Tagi knew what to start doing until Richard spoke up. Richard was able to get everybody to get started on their camp. At the Pagong tribe, B.B. took leadership at camp. Colleen and Greg were wondering off alone. Back at Tagi, Sonja cut her leg but Sean was able to fix it up, and Stacey got annoyed with Rudy and wanted to get rid of him. At the immunity challenge, Pagong won after Sonja stumbled in the water. They voted out Sonja for being the weakest link 4-3-1.

Episode 2: The Generation Gap

- **Immunity Challenge:** Each castaway was given a grub. If they refused to eat, their tribe would automatically lose.

At Pagong, people began to realize how they liked B.B., and everyone began to realize that Colleen and Greg were together. At Tagi, Richard told stories of him being gay. Richard didn't tell Rudy because he thought if he found out that he was gay Rudy wouldn't want to be near him. Greg kept everyone entertained with the All New Newly Stranded Survivor Game. The next day, B.B. got frustrated with his tribe because most of them were lazy and Ramona was sick. At the immunity challenge, each tribe member ate their grub, so Pagong picked Stacey and Tagi picked Gervase to represent the other team in a race to eat 2 grubs. Tagi won thanks to Stacey. Pagong went to their first tribal council where B.B. was voted out 6-2.

Episode 3: Quest for Food

- **Reward Challenge:** Each tribe swam out to an inner tube attached to a sunken treasure chest. Once all of the tribe members are at their tube, they would dive down and drag their chest to shore.
- **Reward:** Fishing supplies.
- **Immunity Challenge:** Each tribe built a stretcher, and raced into the woods to rescue one tribe member stuck in a tree. They then had to carry that tribe member back to the beach and to the first aid tent.

At the Tagi tribe, Stacey still wanted to get rid of Rudy and tried to create a girl alliance to do so, but Susan didn't want to be a part of the plan. At Pagong, Greg and Colleen found a big mud pit that the entire tribe was able to enjoy. At the reward challenge, Tagi won. Back at Pagong, everyone ate rats, including a hesitant Gervase and Ramona. At Tagi, Dirk annoyed everyone with his bible reading. Pagong won the immunity challenge. At tribal council, Tagi voted out Stacey 5-2. A surprised Stacey mentioned that people had changed their votes.

Episode 4: Too Little, Too Late

- **Reward Challenge:** The castaways had to make a distress signal, the goal was to make the best

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S.O.S. signal for the plane (with Jeff in it) to see.

- **Reward:** Hammocks, towels and pillows, plus two additional items (one chosen by each tribe).
- **Immunity Challenge:** It was a five part relay race. The first member swam to a buoy, dove down and retrieved a map in a bottle. The second member ran across a floating bridge with the bottle to a waiting boat, where the second and third members would paddle to shore. The fourth member would break the bottle, check the map, and sprint into the jungle to find a rope ladder and a key. For the final leg, the two remaining tribe members had to locate a buried treasure chest and dig it up. The first tribe to unearth their treasure chest and bring it back to the start line and have the key inside the lock won.

At Pagong, Ramona started to feel better after having been sick and tried to put her work ethic to place, but Jenna said it might be too late for her. At Tagi, Sean and Dirk were busy fishing, but had no luck; Sean also tried to build a bowling alley. Kelly, Richard, Rudy and Susan created an alliance. At the immunity challenge, Gervase had problems on the sprint into the jungle and Pagong lost. They voted out Ramona 4–2–1.

Episode 5: Pulling Your Own Weight

- **Reward Challenge:** Tribes would select three tribe members to shoot for the tribe in three rounds. The first one was a blow gun, the second round was a sling shot, and the third round was a spear toss.
 - **Reward:** Fruit and chickens.
- **Immunity Challenge:** One person from each tribe rowed their boat around the buoys, picking up their tribe members waiting in the water. The first tribe to get all members back to shore won.

At Tagi, Dirk and Sean were still trying to fish (with no success) instead of helping around camp. Susan told them that it was a waste of time if they weren't catching anything. At Pagong, everyone felt vulnerable because their tribe was getting smaller. At the reward challenge, Joel helped Pagong win reward with his spear throwing after the first two rounds were tied. At Tagi, Dirk and Sean began to help around the camp but that didn't change their tribe members' minds. At Pagong they decided to let their chickens lay eggs. At the immunity challenge, Gervase help Pagong to victory and Kelly, the white water rafting guide, was upset that "she got beat by a guy who couldn't even swim". At Tagi's tribal council, Dirk was voted out 4–1–1.

Episode 6: Udder Revenge

- **Reward Challenge:** One at a time, each tribe member raced to a barrack. There were three different items in there (a can opener, a knife, and an Army helmet). The first tribe to get all of their items (with no duplicates) back to the start won reward.
 - **Reward:** Canned foods and a chocolate bar.
- **Immunity Challenge:** Both tribes raced through an Army obstacle course. The first two tribe members raced through the first part and met up with two more members, then they had to go through a puzzle and race to the finish line.

Each tribes were wondering what the merge was going to be like. At Tagi they were afraid that they might get outnumbered after the merge. At Pagong, Joel felt confident because they had the numbers. Colleen thought Joel was an idiot because they weren't merging yet and still had a chance of going in even. Gervase offended the girls by telling them that they were dumber than a cow. At Tagi, Richard

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began walking around camp naked. At the reward challenge, Richard brought back a duplicate knife instead of a can opener and Pagong won by default. At Pagong, Gervase tried to create an alliance with Joel to get rid of the girls, and Joel started to get a little bossy, which annoyed the girls. Tagi won the immunity challenge in a very close race. With help from Greg, the women of Pagong voted out Joel 4–2.

Episode 7: The Merger

- **Immunity Challenge:** All ten castaways submerged themselves underwater to see how long they could hold their breath. The top three castaways then had another competition of releasing buoys along a ladder submerged underwater. The first castaway to release all of their buoys would win immunity.

The day after Pagong voted Joel out, one person from each tribe went to the opposite tribe's camp and would then convene to decide which camp to live on. Jenna went to Tagi and Sean went to Pagong. After a bit of time at camp, Jenna and Sean met with each other at a neutral site (the sandbar) to decide which camp they wanted to live on and what to name the new merge tribe. They were welcomed by a feast, including lobster and wine, and got to stay the night under a canopy shelter and on beds. The next day, Jenna and Sean decided to live at the Tagi beach and named their merged tribe Rattana. All ten castaways are now together and everyone celebrated, except Rudy, who got annoyed because the population doubled. Greg won immunity after a close battle with Sean. At tribal council, the Pagong 5 (as well as Sean) were completely split and voted individually, while the Tagi 4 of Kelly, Richard, Rudy and Susan stayed together and voted out Gretchen 4–1–1–1–1–1.

Episode 8: The Name Is Duplicity

- **Reward Challenge:** Each tribe member was to shoot at an archery target with a bow and arrow. The closest mark to the bullseye won.
 - **Reward:** A video from home and the chance to send a video home to them.
- **Immunity Challenge:** Each member was connected to a piece of rope and needed to go to the checkpoints in number order (1–6) and collect the color carabiners at each check point and then cross the finish line.

At camp, the remaining members of the former Pagong tribe felt vulnerable because the Tagi tribe voted out their leader Gretchen. Susan thought Jenna was going to be really annoying, but after a while realized she wasn't that annoying. Richard started to worry about who voted for him at tribal council. At the reward challenge, Jeff showed everyone a sneak peek at the award challenge except for Jenna because they never received a video for Jenna. Greg went first and no one hit the mark closer, so he won reward and saw his home video from his sister and sent one back to her. Rudy thought there might be some incest behavior between Greg and his sister. Jenna was frustrated about losing the reward challenge and instead of watching Greg's video, continued to practice with the bow and arrow, continually hitting the target closer than Greg's mark. People began to realize that Richard liked Greg because of the way he was playing the game. Greg realized that Richard was a powerful player in this game. Gervase won immunity. At tribal council, the Tagi 4 and Jenna piggy-backed off Sean's alphabet strategy and voted out Greg 6–3.

Episode 9: Old and New Bonds

- **Reward Challenge:** A rope course with 16 legs, each leg had a medallion with the castaways number on it. First castaway to receive all of their medallions and get back to the center won reward.

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- **Reward:** A barbecue and letters from home.
- **Immunity Challenge:** The castaways started on a square and moved one square at a time. As they moved, they had to flip over the square they were just on. Each castaway would go until they could no longer move. Last person standing wins immunity.

While Richard was catching fish, people began to realize that nobody voted him out because of it. Rudy didn't make the fire hot enough so the fish wasn't done when it got off the fire, and the attempt to recook it simply burnt it. At the reward challenge, Jenna wanted to win because she didn't hear anything from her family at the last challenge. It was a race between Colleen and Kelly, which Colleen narrowly won. When Colleen won, Jeff told her she could pick one other person and she instantly chose Jenna. After the reward challenge, it was Richard's 39th birthday and he celebrated in his "birthday suit". Richard spent his entire birthday naked which disturbed some of his tribe mates, especially Colleen and Jenna. Rudy won immunity over Sean. Sean was convinced that his alphabet strategy of voting for people was the fairest way and that there was no alliance because he wasn't asked to be a part of it. He continued to vote that way and even told Jenna beforehand that he was voting for her but that he didn't think it would make a difference. At tribal council he was once again proven wrong, as Richard, Rudy, and Sue again piggy-backed off his vote and Jenna was voted out 4-3-1.

Episode 10: Crack In the Alliance

- **Reward Challenge:** Each person started at one end of a balance beam. There were three rounds, where the first half to make it to the other end of the balance beam would move on. The first person to get to the end with both feet on the platform without falling off would win.
 - **Reward:** A slice of Pizza and a phone call home.
- **Immunity Challenge:** Each castaway had a few minutes to grab all of the kindling necessary to build a fire. They then had to take their torch out to the water to floating woks, light their torch, and bring it back to their pile of wood to start their fire. The first person to burn through their rope won.

Some people were happy that Jenna was voted out because she was getting on everyone's nerves. Everyone knew that Sean voted for Jenna and that Kelly didn't, so the remainder of the Tagi alliance felt betrayed by Kelly. The alliance thought about replacing Kelly with Sean because he might have been more valuable. Richard's plan was to catch more fish once Colleen and Gervase were gone. At tree mail, the castaways were surprised by cigars and a note saying that Gervase's son Gunner was born yesterday, which they celebrated. Gervase narrowly beat Richard at the reward challenge and had a chance to call his girlfriend and daughter to see how his baby was doing. He shared his slice of pizza with everyone. While he was making his phone call, Rudy questioned Gervase's life choices (having 4 children without being married) and said that having babies out of wedlock would have never happened when he was his age and that the girl would be "taken out of town" and dealt with. At the immunity challenge Richard easily won and at tribal council Gervase was seen as the biggest threat left from Pagong and was voted out 5-2.

Episode 11: Long Hard Days

- **Reward Challenge:** Each castaway was given a questionnaire about Borneo. The person who answered the most correctly won.
 - **Reward:** The person will go on an overnight trip on a yacht and was given a Visa card.
- **Immunity Challenge:** Each person stood next to each other on a set of 5 planks. One plank would be removed over time until they got down to one plank. Whoever stayed on the longest

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would win.

The Tagi alliance began to crumble because Kelly was always talking to the remaining enemy of the alliance, Colleen. Camp life started to take a toll on everyone. Sean won a reward and was surprised to see his dad on the yacht. Sean told Kelly he was going to take her for the feast, but chose Richard instead, which infuriated the women. Sean brought his dad back to camp to meet everyone, who attempted to update them on current events and the stock market (although Sue thought he didn't know anything), and before he left, he gave each person a care package from their loved ones, which rejuvenated their spirits. At the immunity challenge, Rudy fell off first. Rich attempted to annoy people off the planks by singing "99 bottles of beer on the wall"...until he fell off at 64 bottles of beer. On the beach, Rich thought it was funny that Colleen was really trying to win immunity when she had no chance of going home tonight because they were going to blindsides Kelly. Sean was third to go, followed almost immediately by Sue. Colleen fell off after 2 hours and 54 minutes, giving immunity to Kelly and foiling the Tagi alliance plans. At tribal council, Sean was grilled for taking Rich on the reward instead of Kelly. Colleen, the last remaining member of Pagong, was voted out 4–2.

Episode 12: Death of an Alliance

- **Reward Challenge:** Under a time limit of five minutes, tribe members dove into a mud pit and covered their body with as much mud as they can, then raced back and scraped it off into a bucket. They could not carry mud in their arms or in their hands, only their body. The buckets are then weighed, and the heaviest bucket won.
 - **Reward:** A cold beer, then picked up, blindfolded and taken to a mysterious bar to watch the first five minutes of this season.
- **Immunity Challenge:** "Survivor Witch Project": Jeff told the castaways a story about Borneo folklore. Once he was done, the castaways went out to the woods (where the masks with questions on them were scattered) with a video camera to record their answers. The first person to get back to the start with all of the masks and the questions right on tape won immunity.

With only Tagi tribe members left, the two people that felt vulnerable were Kelly and Sean. Kelly mentioned that she didn't trust Rich, while Rich conspired to get Kelly off next. Sean thought he was stuck with the most conniving people ever. Tempers flared at camp as Kelly and Susan had a fight about their alliance since Kelly didn't vote with them again, and Sue said that Kelly made them all look like idiots. Richard attempted to smooth things over, although he said that the fight played to his advantage. Sue got hit by a ray and her hand swelled up. On day 34, all of the castaways talked about how they missed home. Kelly collected 15.9 lbs at the reward challenge, followed by Sean (15.4), Susan (15), Rich (12.4), and Rudy (10). After the reward challenge, Susan and Kelly rekindled their friendship. Kelly went with Jeff to watch the first 5 minutes of episode 1 and talked to Jeff about how the game was going for her. On day 36, Kelly and Susan agreed to keep civil with each other, although Susan told Kelly she didn't want her in the final 3 because she was such a threat. Sean knew he needed to win immunity and attempted to exploit the Kelly-Susan friendship. Kelly won her third challenge in a row. Sean said he was definitely winning this thing even though it would be an uphill battle. Rich tried to decide whether he would be voting for Sean or Rudy, although Rudy was confident that it would be him and Rich in the final 2. While everyone spoke of voting for different people, in the end the original Tagi 4 stuck together and Sean was voted out 4–1.

Episode 13: Season Finale

- **First Immunity Challenge:** "Fallen Comrades": Jeff asked 10 questions about the jury members. The person who got the most the questions right won immunity.

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The remaining 4 reflected on how much their bodies have changed, and how the game was played by them and by others. Kelly said she felt like the odd man out and was stressed because she didn't feel safe. She said that she was now playing for herself. Richard, Rudy, and Sue were planning to vote out Kelly if she didn't win immunity. At the challenge, Kelly and Sue were tied after 10 questions, but Kelly got the tiebreaker question correct, giving Kelly won her fourth challenge and third immunity in a row. Directly after at tribal council, there was a 2–2 tie between Richard and Susan. During the revote in which only Rudy and Kelly voted, Kelly changed her vote and Susan was voted out 2–0.

- **Second Immunity Challenge:** "Hands on the Immunity Idol": Each tribe member held on to the immunity idol while standing on a small log. The person who lasted the longest wins immunity.

At 4:00 am on day 38, the remaining 3 were awoken by Jeff, told to put on something comfortable, and took a long boat ride to their rite of passage and final immunity challenge. For their rite of passage, they covered themselves with mud, walked through palm fronds held by locals, passed the torches of their fallen comrades, then passed through a bamboo curtain and walked barefoot through a fire pit. After two hours of holding on the idol, Jeff tempted the three with oranges. After 2 1/2 hours, Richard gave a speech, said he wouldn't be able to outlast Kelly, and stepped down voluntarily. He said that it was a game of odds and he didn't know what the winner would actually do. After three hours, the two left switched positions while keeping their hand on the idol and were to do so every half hour. While the two were still standing on the pole, Rich addressed the alliance to Jeff and how he wasn't surprised that Kelly changed her vote. After 4 hours, 11 minutes, Rudy took his hand off the idol while switching spots, and Kelly won immunity yet again. Rich and Rudy both said it was in Kelly's best interest to keep themselves. At tribal council Kelly voted out Rudy because she thought she might have a better chance of winning against Richard.

At the final tribal council, Gervase asked if there was one, two or three things they would change about their time on the island, if anything at all (Rich said trusting people so easily; Kelly said making an alliance). Jenna asked who they would put in the final 2 and why (Rich said Rudy and Greg; Kelly said Sonja and Gretchen). Sean had no questions, but congratulated the two and thanked Kelly for being capable and keeping camp afloat, and told Rich that he enjoyed his company although he played the game differently. Colleen asked what three character traits got them where they are and are essential to get future players to the finals (Kelly said faith, strong will, and likability; Rich said self-awareness, observation of relationships, and ethics). Rudy said he had nothing to say to those two, but felt dumb after the mistake he made yesterday. Greg had them choose a number between 1 and 10 (Rich said 7; Kelly 3). Sue gave her famous "rat and snake" speech. In the end, Rudy, Sue, Sean, and Greg voted for Rich and Jenna, Gervase, and Colleen voted for Kelly. With that, Richard Hatch became Survivor's first millionaire by a vote of 4–3.

Voting history

Episode #:	Original Tribes								
	1	2	3	4	5	6	7	8	9
Eliminated:	Sonja 4/8 votes	B.B. 6/8 votes	Stacey 5/7 votes	Ramona 4/7 votes	Dirk 4/6 votes	Joel 4/6 votes	Gretchen 4/10 votes	Greg 6/9 votes	Jenna 4/8 votes
Voter	Vote								
Richard	Stacey		Stacey		Dirk		Gretchen	Greg	Jenna

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Kelly	Rudy		Rudy		Dirk		Gretchen	Greg	Sean
Rudy	Sonja		Stacey		Dirk		Gretchen	Greg	Jenna
Susan	Sonja		Stacey		Dirk		Gretchen	Greg	Jenna
Sean	Sonja		Stacey		Rudy		Colleen	Greg	Jenna
Colleen		B.B.		Ramona		Joel	Richard	Jenna	Richard
Gervase		B.B.		Colleen		Jenna	Susan	Jenna	Richard
Jenna		B.B.		Ramona		Joel	Gervase	Greg	Richard
Greg		Ramona		Jenna		Joel	Jenna	Jenna	
Gretchen		B.B.		Ramona		Joel	Rudy		
Joel		B.B.		Ramona		Jenna			
Dirk	Sonja		Stacey		Susan				
Ramona		B.B.		Colleen					
Stacey	Rudy		Rudy						
B.B.		Ramona							
Sonja	Rudy								

Jury vote		
Finalist:	Kelly 3/7 votes	Richard 4/7 votes
Juror	Vote	
Rudy		Richard
Susan		Richard
Sean		Richard
Colleen	Kelly	
Gervase	Kelly	
Jenna	Kelly	
Greg		Richard

Production

In 1998, CBS offered Mark Burnett the chance to present his idea of this reality show to producers. In October 1999, CBS held a casting call for a new reality show concept. The idea was *Survivor*, in which sixteen people would be stuck on an island 20 miles (32 km) away from the mainland of Borneo. Ten main cameras were set on the island that would film the castaways every day. Every three days, a Tribal Council would be held in which

The abandoned institute is on the island of the boomerang's open "V." This is the leeward side of the island. It faces west, and the South China Sea sunsets turn the sand orange-purple each evening at 6:30. One these shores we built a dock for offloading equipment, then living quarters with cold-water showers for sixty-five personnel-the camera crews, the production staff, and the assorted other individuals vital to producing thirteen hours of

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one castaway would be voted off the island. The last castaway to be on the island would win \$1 million.

prime-time television.

Mark Burnett, *Survivor: The Ultimate Game* — Page 11

Over 6,000 people applied for the show; 800 were then interviewed in sixteen cities. 48 people were then chosen, and after background checks and psychological evaluations done by the producers, the final sixteen contestants and two alternates were picked.^[1]

As the survivors awaited the game's start, *Survivor* crews prepared the island for reward and immunity challenges, removing any harmful items, checking for any harmful animals in specific locations, and building a Tribal Council set. Camera and other crews were sent to the island three weeks in advance for testing. On the opposite side of the island from the tribes, headquarters were set up for the producers, and crew to live in on the island. This facility included many traditional trailers with running water, televisions, and one phone line. The Tribal Council set was built two hundred yards from the crew's facility. The Tribal Council set was 30 by 30 feet (9.1 by 9.1 m) with no walls and only a platform. In the middle of the set was a fire lava pit providing fire for the torches, which represented the castaways' life in the game.^{[1][7]}

On March 7, 2000, the contestants were flown to Los Angeles, then to the city of Kota Kinabalu in Malaysian Borneo. From there, they were taken by boat to their island. Contestants were not allowed to speak to one another until they got on the boat headed towards their beaches.^[1] The two tribes shared the island of Pulau Tiga, which was divided by over 20 miles (32 km) of forest. The castaways were surrounded by wildlife such as pythons, kraits, adders, monkeys, monitor lizards, and white-bellied sea eagles.^{[1][7]} The show was set to air in the summer of 2000.^{[1][7]}

Reception

Survivor: Borneo received mixed reactions in the media. Bill Carter, a writer for *The New York Times* stated that *Survivor* has "clearly begun to emerge as part of the wider culture, with news and discussion about the show widespread on television and radio talk shows and coverage increasing in newspapers."^[8] On the *Late Show with David Letterman*, David Letterman began a segment titled, "Top 10 Things That'll Get You Thrown Off the Survivor Island." During the first season, *USA Today* held coverage of the show as if it were a sporting event, listing which participant was voted off. *USA*

I always believed it was going to generate strong water cooler conversation. Nobody could have predicted the ratings success. But I knew that the premise — a group of people marooned on an island, where they had to survive by working together, and they had to work against each other to win a million-dollar prize—I knew that premise was superior.

Mark Burnett, *The New York Times*^[8]

Today also held a poll to see who viewers would have voted off. With 26 percent, Susan Hawk won the poll, although it had no effect on the game, as Sue made it to 4th place. CBS's *The Early Show* held an interview with each contestant the day after the episode in which they were voted off aired. By the second week, the show had already gained over 18 million viewers, beating out ABC's show *Who Wants to Be a Millionaire?* in ratings.^[9] After the season finale, Carter said that *Survivor* "built over a 13-week run to what was expected last night to be the biggest single television audience ever assembled for a summer television series, far eclipsed every expectation the network had when it acquired the rights to the show last year." Leslie Moonves, the president of CBS Television said that "it has beaten our expectations by about double."^[8] The finale of *Survivor* was watched by 51.7 million viewers, the second-highest viewership of any American television episode during the first decade of the 21st

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century, exceeded only by the finale of *Friends*.^[10] The finale had higher ratings than the World Series, N.B.A. finals, N.C.A.A. men's basketball finals, and Grammy Awards of that year. CBS was able to make the cost of commercial advertisers up to \$600,000 during the season finale.^[8]

Survivor: Borneo was criticized by the People for the Ethical Treatment of Animals (PETA) in response to footage showing the contestants trapping rats on the island, initially for fish bait but later for human consumption.^[11]

I plead to the jury tonight to think a little bit of the island we have been on. This island is full of, pretty much, only two things - snakes and rats. And in the end of Mother Nature, we have Richard The Snake, who knowingly went after prey; and Kelly, who turned into the rat that ran around like rats do on this island, trying to run from the snake. I believe we owe it to the island spirits we have come to know to let it end in the way that Mother Nature intended: For the snake to eat the rat.

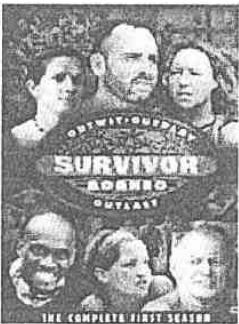


Susan Hawk, *Survivor: Borneo*, Episode 13^[12]

Susan Hawk's "snakes and rats" speech given during the final Tribal Council has been considered one of the greatest and more memorable speeches in the show's history,^{[13][14]}

DVD release

The DVD release of season one was released by CBS Home Entertainment in the U.S. on May 11, 2004, after it had completed broadcast on television. As well as every episode from the season, the DVD release features bonus material including commentary, interviews and behind-the-scenes featurettes.^[7]^[15]

The Complete First Season

	Set details ^[15]	Special features ^[7]
	<ul style="list-style-type: none"> Audio commentary 664 minutes 5-disc set 1.33:1 aspect ratio Languages: <ul style="list-style-type: none"> English (Dolby Digital 5.1) 	<ul style="list-style-type: none"> Documentaries Episode Summaries <ul style="list-style-type: none"> Highlights Immunity Challenges Reward Challenges Voting Results Survivor Profiles Survivor Favorite Voting History Final Words The Island
	Release dates ^[2]	
	<div>  Canada  United States </div> <div> May 11, 2004 May 11, 2004 </div>	

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http://en.wikipedia.org/wiki/Survivor:_Borneo

CPD020616

Survivor: Borneo - Wikipedia, the free encyclopedia

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Notes

- ^A The **Total Votes** is the number of votes a castaway has received during Tribal Councils where the castaway is eligible to be voted out of the game. It does not include the votes received during the final Tribal Council.
- ^B In the case of multiple tribes or castaways who win reward or immunity, they are listed in order of finish, or alphabetically where it was a team effort; where one castaway won and invited others, the invitees are in brackets.
- ^C The first challenge was a combined reward/immunity challenge. The winning team received immunity and waterproof matches.
- ^D Sometime between day four and six, a reward challenge took place that was not aired. The challenge involved holding weight on poles. Richard held the weight for Tagi, as Joel for Pagong. The reward was a map to a closer water hole.
- ^E The final four vote was tied with Richard and Sue each receiving two votes. In the tie-breaker vote, Rudy continued to vote against Sue while Kelly changed her vote from Richard to Sue.
- ^F There was no reward challenge because of the tribal merge.
- ^G Richard and Susan were not eligible to vote in the second Tribal Council vote.

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External links

- Official CBS Survivor Borneo Website (<http://www.cbs.com/primetime/survivor/recaps/?season=1>)

Retrieved from "http://en.wikipedia.org/wiki/Survivor:_Borneo"

Categories: Islands of Sabah | Survivor seasons

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24 23

Paul Frasier

From: Mark Dannels [mdannels@cityofcoquille.org]
Sent: Wednesday, May 19, 2010 8:09 AM
To: Paul Frasier
Subject: RE: Wish List #2

Groundhog day again?? LOL

By the way, we spoke to Big John yesterday and he advised and showed us that he went to his sister's residence on Elm, less than a block from Sherri Mitchell's residence and watched Survivor till 9:00 pm on June 28, 2000. He left minutes later and saw Nick McGuffin and Leah together on Elm Street. (he knows both of them) In the original report/information, he thought the Mitchell house was Leah's house and after showing us exactly where he was talking about, he was confused between Leah and Mitchell. It appears he observations were not given much credit due to the mix up?

In brief, that puts Leah and Nick together after 9:00 pm supporting Scott Hamilton too and putting doubt in Nick's story??

Also, most if not all of the names we have spoken to have either said sorry, I can't provide anything to help the case (Nick) or it was a rumor they heard with no merit!!

Thanks,

Mark

From: Paul Frasier [mailto:pfrasier@co.coos.or.us]
Sent: Tuesday, May 18, 2010 8:41 PM
To: mdannels@cityofcoquille.org
Subject: Wish List #2

The continuing saga.....This is not as bad as the first.

R. Paul Frasier
District Attorney for Coos County Oregon
250 North Baxter
Coquille, Oregon 97423
541-396-3121 x 307

Lindgren -
where is
original report?
- ability to effectively
ex exam

5/19/2010 CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Coquille 003474

7/6/00 HIT mtg 9-9:30 AM @ Cog. P.D.

Leah Freeman
Last seen

June 28th @

9:15p-9:30p

Chief REEVES, Dave Hall, Craig Zamm
Young

Federal Bureau of Investigation



DAROLD M. HESSEL
Special Agent

530 Center Street N.E.
P.O. Box 511
Salem, OR 97308

(503) 362-6601
Fax: (503) 585-5667

FBI - 2nd agent
Wm. Soules



FEDERAL BUREAU OF INVESTIGATION

WILLIAM M. SOULE
SPECIAL AGENT

POST OFFICE Box 687
EUGENE, OREGON 97440

(541) 343-5222
FAX: (541) 349-2388
24HR: (503) 224-4181

7/7/00 IOA HIT mtg @ IOA Cog. P.D.

Full mtg, case history, investigator's
reports - time line of Leah

RE: car Dave Hall will return s.w.



"clean" car, not wiped

- mentioned on T.V.

- would Leah accept ride w/ stranger

when did they clean car
esp. trunk

can't wipe

KW000254

CONFIDENTIAL

7/6/00 (cont.)

~10:45 A. Start search of 1967
blue Ford Mustang PEA 840
luminol, ALS, brightlight
exam, interior, exterior,
trunk, engine, underside
vacuum (mostly dust)
duct tape. end (roll did
not look recently used)
photos including tires
car not recently washed
interior lightly dusty
seats → clean vinyl (did
not tape lifted)
- start report
~4 p.m. finish w/ car

5p off duty
F.I. 8h

Car -
dust
roll # recently used
tires # washed
interior lightly dusty

7/7/00 F/lab

sunny/cw in, Lt. PEX on vac.

8A on duty @ lab
- sort DV photos
- work on Cog. case,
phone Putnam & Band lab
brief Lt. PEX

9³⁰A lv. lab for Cogville

10A @ HIT team mtg in "

RE: Leah Freeman case

↓ (include lunch)

1P lv. for lab

13³⁰P @ lab - file up & drug case

5p off duty

PE./F.I. 6h

C.S. 1h

admin. 1h

KW000003

CONFIDENTIAL

Page 113

1 A. Well, okay. Please ask the question again,
2 because you -- I don't know if I had an expectation of
3 there -- of those tools being in the trunk. They
4 were -- the fact that there was nothing in the trunk is
5 what was kind of unusual.

6 Q. And we talked about the gas leak. So how did
7 that gas leak factor into your thinking?

8 A. I called -- I was told later that perhaps things
9 been taken out of the trunk so that they could repair
10 the gas leak. That's something I heard somewhere along
11 the line later. I can't even tell you when.

12 Q. Was that something that you heard -- sorry. Who
13 did you hear that from?

14 A. I don't recall.

15 Q. You said you could not tell me when you heard
16 that. Was that before the trial or after the trial?

17 A. It was before the trial.

18 Q. Did you make a notation of that anywhere?

19 A. No.

20 Q. Did you report that information to anyone?

21 A. No. It was reported to me.

22 Q. And I'm asking, did you, I guess, re-report that
23 information to anyone?

24 A. Not in a written report. I can't remember if I
25 talked to anybody else about it or not.

Stumptown Steno
503.888.1416

gas leak

Page 114

1 Q. Do you have a memory of talking to someone else
2 about it?

3 A. Yes.

4 Q. What was that memory?

5 A. I was talking, I think, on the phone to somebody
6 and I said, well, where are the items from the trunk?
7 And they said -- or why, and they said, oh, the
8 trunk -- they knew -- they talked to witnesses or
9 something and they said, oh, well, the trunk was
10 cleaned out because they needed to fix the gas leak.
11 But that was after I did the search. It was around
12 that time, sometime in the next day or two, maybe at
13 one of the meetings, but I can't recall specifically
14 who I talked to or even when. But it was within a
15 couple of days of when I did the Mustang, because then
16 it was kind of like, okay, that's resolved. We're
17 done.

18 Q. With that new information, did you go back and
19 amend your report?

20 A. No.

21 Q. Is that something that the OSP protocol would
22 have required an amendment for?

23 A. No.

24 Q. Why is that?

25 A. It wasn't my information.

Stumptown Steno
503.888.1416

talked to @
after @ did SWE

Page 115

1 Q. What do you mean it wasn't your information?

2 A. I did not do that investigation. I report what
3 I see, what I hear, not what people tell me.

4 Q. And in your report, you reported that the trunk
5 compartment was empty and there was no spare tire or
6 trunk liner. Then we saw the search warrant affidavit
7 where Detective Hall then reports again on that
8 information.

9 Did you consider going back to inform Detective
10 Hall that you had resolved that?

11 A. No.

12 Q. Why not?

13 A. That wouldn't have been my job.

14 Q. I'm going to show you what I have marked as
15 Exhibit 10.

16 (Exhibit No. 10 marked for identification.)

17 Q. I'll blow this up because I recognize that the
18 writing is very small. This a conversation log that we
19 received from the Oregon State Police crime lab. Here
20 on this first entry, it's dated February 1st, 2010.
21 There was a contact from Paul Frasier to -- I think the
22 name here says Putnam, I believe that's Brad Putnam, by
23 phone. Brad Putnam writes here in this section --

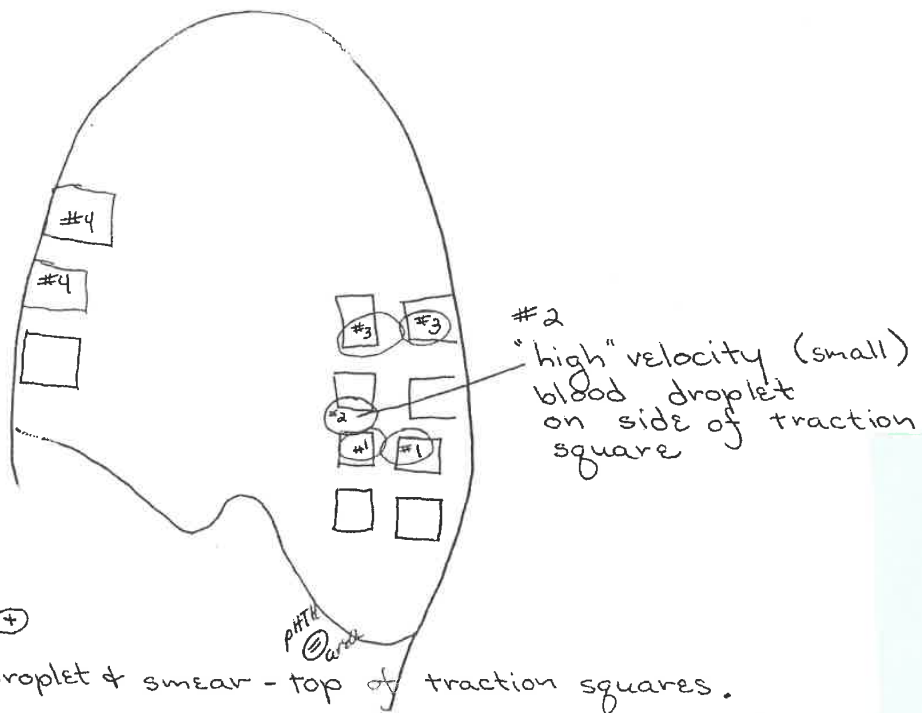
24 A. Hang on just a second. Can we get rid of this
25 tab right there so I can read what she's showing?

Stumptown Steno
503.888.1416

00N481
7/17/00
EX 2
KW

p.4

Left shoe



Shoe diagram

swab #1 PTHH (+)

trace of small droplet & smear - top of traction squares.

swab #2

small droplet on side of traction square.

swab #3

trace of two smears on top of traction squares.

swab #4 PTHH (+)

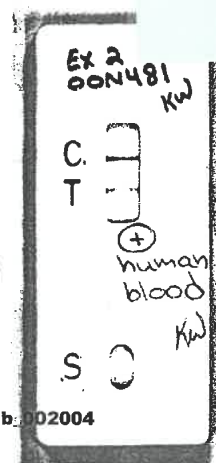
trace of two " " " " " " " "

swab #5

reswabbed above areas \Rightarrow ABA card & PTHH (+).

swab #6

reswab of all possible blood areas.



Page 136

1 Q. When we started this deposition, you mentioned
2 that you had reviewed some areas of your testimony from
3 the trial. Did you review your testimony about the
4 medium to high -- sorry.

5 Did you review your trial testimony about the
6 medium to high-velocity blood on the bottom of the
7 shoe?

8 A. Yes.

9 Q. What was the basis for that testimony? Was it a
10 conclusion at that point or still an observation?

11 A. I'm pretty -- I can't remember the testimony
12 word for word. It was a description of the blood.

13 Q. And you and I have -- I guess we should define
14 this. What's the difference, in your mind, between a
15 description of the blood versus a conclusion?

16 A. A conclusion would be if I could duplicate it
17 and, you know, go out, put a shoe down, that -- a shoe
18 like that and duplicate that, and I wasn't sure I could
19 do that.

20 And, also, there just wasn't a lot of droplets
21 there. It was hard to reach a really firm conclusion
22 with such a small sample.

23 Q. So the first thing you said there was you
24 weren't sure how you could duplicate it.

25 A. Yes.

blood description
vs conclusion

Stumptown Steno
503.888.1416

Page 137

1 Q. Does that go back to our earlier conversation
2 about the trainings that you did on blood stain pattern
3 analysis where you were doing experimentation to create
4 those blood droplets?

5 A. Yes.

6 Q. And you weren't sure how you could do that with
7 respect to the -- what you saw on the shoe?

8 A. Yes.

9 Q. Did you document that idea anywhere, that you
10 weren't sure how you would duplicate this?

11 A. No.

12 Q. And did you tell anyone about that, that you
13 weren't sure how to duplicate this?

14 A. I don't recall.

15 Q. And then that second idea that it's hard to
16 reach a firm conclusion when you have a such a small
17 sample, are we talking about a small amount of blood?

18 A. So -- yes, and so few droplets.

19 Q. So does that get to this idea of you need a
20 pattern?

21 A. Yes.

22 Q. Did you document that idea, that it was hard to
23 reach a firm conclusion with such a small amount of
24 blood? Did you document that anywhere?

25 A. No.

Can't duplicate
Such small
a pattern
amt

Stumptown Steno
503.888.1416

1 Q. Did you tell anyone about that?

2 A. I don't recall a specific conversation. I'm
3 sure we talked about it in the lab.

4 MR. DAVIS: Counsel, I'd like to take a
5 break when it's convenience.

6 MS. PURACAL: Sure.

7 Q. I just have a couple more questions about your
8 testimony at trial, Ms. Wilcox.

9 When you testified at trial, you testified that
10 it could also be caused by getting smacked in the nose
11 and then smacked again.

12 How could this small droplet be caused by
13 getting smacked in the nose?

14 A. It -- I was trying to make the point, I think,
15 that if you're already bleeding and then you put force
16 behind a bloody object, you can get some of these
17 little small cast-off blood droplets.

18 Q. And you also testified at trial that it could be
19 caused by having a split lip and then coughing or
20 sneezing. So how could it be caused by that?

21 A. If something is already bleeding and you have
22 blood, and then put -- once again, put force behind it
23 as opposed to, you know, if you cut your finger and hold
24 it up and just let the blood drop, it's going to be a
25 pretty good-sized droplet. Depending on your surface,

Page 139

1 it could be dime-sized, and we didn't have that here.

2 Q. What was the evidence that you had that the
3 droplet at the area of swab 2 came from Ms. Freeman's
4 nose or lip?

5 MR. DAVIS: Objection; mischaracterizes the
6 testimony.

7 Q. You can answer, Ms. Wilcox.

8 A. I had no idea where the blood came from. I was
9 asked a question. I didn't make a conclusion.

10 Q. How do you account for directionality to
11 determine that the blood could come from Ms. Freeman's
12 nose or lip and end up on the bottom of her shoe?

13 MR. DAVIS: Objection; mischaracterization.

14 A. I did not.

15 Q. You did not make that determination?

16 A. Correct.

17 Q. Did you talk to any of the investigators prior
18 to trial about the difference between a description of
19 the blood and a conclusion?

20 MR. DAVIS: Objection; asked and answered.

21 Q. You can answer, Ms. Wilcox.

22 A. I don't remember any specific conversations.

23 MS. PURACAL: I think we can take a break
24 now. We'll go off the record for ten minutes and come
25 back at 2:30.

no idea where
blood
can
from

Stumptown Steno
503.888.1416

KKarcher

Kristine M. Karcher
December 23, 2021

1 A. No. I don't remember.

2 Q. Did you review the reports of others who had
3 analyzed the shoes?

4 A. Um ... What specifically are you asking about the
5 shoes? Because some things I remember about the shoes.

6 Q. Well, why don't we start with that. Can you tell
7 me what you do remember about the shoes?

8 A. I remember when Kathy Wilcox -- I believe it was
9 Kathy Wilcox -- located blood on the shoe, high-velocity blood
10 on the bottom of the shoe. And I happened to be in the crime
11 lab picking something up or delivering something when she came
12 out and told Lieutenant Pex that she had found high-velocity
13 blood. That's about my whole interaction with the shoes.

14 Q. Did you actually see the bloodstain pattern on the
15 shoe?

16 A. No. I never saw the shoe. It was back in the
17 crime lab. I wouldn't -- I wouldn't have been allowed back
18 there.

19 Q. Do you remember anything else about the shoes?

20 A. No.

21 Q. And I was wanting to know if you had reviewed Kathy
22 Wilcox's report of examining the shoe. Do you remember
23 reviewing that report?

24 A. No.

25 Q. And I guess I should ask a better question there.

Kristine M. Karcher
December 23, 2021

1 I asked if you remember reviewing the report. Is it possible
2 that you reviewed the report, or is that not something that you
3 reviewed?

4 A. That is not something that I routinely review. I
5 don't -- I don't review analysis. When it comes back from the
6 crime lab, it doesn't come through me. I collect and package.
7 I don't test or analyze. And so we might hear in a briefing
8 what was found, but it -- the report wouldn't have come to me,
9 nor would I have looked at it.

10 Q. Is that the same for the DNA reports on the shoes?

11 A. Yes. Mm-hm.

12 Q. When we were talking earlier about your role as a
13 death investigator, it sounded like you were gathering
14 information to try and determine the cause and manner of death.
15 Is the reports about the shoes -- does that not impact your
16 opinion on the cause and manner of death?

17 A. Yes.

18 Q. I want to make sure that's clear for the
19 transcript. It does not impact your opinion. Is that right?

20 A. It impacts our opinion. It's information to put
21 within the puzzle. It's another piece of the puzzle.

22 Q. Okay. So it does impact your opinion. So is there
23 a reason --

24 A. Yes, it does.

25 Q. Is there a reason that you did not review the

Kristine M. Karcher
December 23, 2021

1 A. I don't remember.

2 Q. What about before grand jury?

3 A. I don't remember any specific conversations. But
4 we -- I mean, we would have- -- we could have, but I don't
5 remember.

6 Q. What did you tell him that it could have been
7 caused by? High-velocity impact spatter, what it -- could it
8 be caused by.

9 A. Well, I think I testified that high velocity can be
10 from, like, an explosion or a sneeze or a cough, a gunshot.
11 It's usually very small. Sometimes it's even like mist, it's
12 so small.

13 Q. You've testified at trial that it could also be
14 caused by a cut in the mouth. How would it be caused by a cut
15 in the mouth?

16 A. You know, that would have been -- what I'm
17 referring to, I believe, is that that could have been where the
18 blood source came from, and then she coughed or sneezed, and it
19 caused the high-velocity blood spatter to come out of her
20 mouth, maybe from like a little nosebleed or a bite in her
21 mouth or a cut from her braces on her -- inside her mouth,
22 something like that. But there had to have been a source of
23 blood for there to be blood spatter.

24 Q. What was the evidence that you had that it came
25 from her mouth or her nose?

Kristine M. Karcher
December 23, 2021

1 A. I had no source. It was just a possibility.

2 Q. Were you aware of where the blood was on the shoe?

3 A. It was on the bottom. I don't know where on the
4 bottom. I just had learned it was on the bottom and I think o
5 the shoelace, if I remember right. But my memory is not good
6 about that shoe.

7 Q. So how did you account for directionality to
8 determine that the blood could have come from her mouth or her
9 nose and ended up on the bottom of her shoe?

10 A. Well, I think that it was just a theory, and it's a
11 possibility. It's a way for there to be blood to spatter on
12 her shoe. And to get on the bottom of the shoe, it had to have
13 come from above.

14 Q. And that's what I'm trying to figure out. So if it
15 came from above, how does it end up on the bottom of her shoe?

16 A. She probably didn't have her shoe on. And, again,
17 that's just a theory and a speculation, and I have no idea.
18 But that's just a theory.

19 Q. So you didn't have any evidence to support that
20 theory or speculation at that time. Is that correct?

21 A. That's correct.

22 Q. You also testified that it could come from
23 strangulation. How would that work?

24 A. Well, strangulation causes a backflow of -- i
25 occludes your circ- -- or it can occlude your circulation. So

just possibility
blood from
mouth

directionality
- just a theory
- a possibility
theory - speculation
to bottom of shoe

Kristine M. Karcher
December 23, 2021

1 the circulation coming is being pumped from your heart and
2 going to your brain. And about 20 percent of our blood is
3 our brain. So when you stop -- all of a sudden stop it, the
4 blood -- if you stop the carotid, the blood can't get back --
5 can't get back up there. If you stop the jugular, the blood
6 can't get back out of the -- of your brain. So at that point
7 there's a possibility that your heart keeps beating, blood
8 keeps going up there, and it causes all of your veins and
9 capillaries to become engorged and rupture.

10 It's not uncommon to see a bloody nose with a
11 strangulation victim. It wouldn't be unusual to find damage to
12 the inside of the lips from a strangulation event. So that was
13 a possibility for the source of the blood. Again, it was a
14 theory. No evidence to support that.

15 Q. Were you the one who arranged the DNA testing on
16 the shoes and the clothing by the lab in England?

17 A. That was -- arranged? I made contact with
18 Ms. Taylor, who contacted their lab, and so it was through me
19 and through law enforcement and the DA's office.

20 Q. And I understand from your testimony earlier that
21 you did not examine the clothing before you took it to the lab
22 in England. Is that correct?

23 A. That's correct.

24 Q. What was the goal of the testing through the lab in
25 England?

Strangulation
again a
theory
possibility
no evidence to support

**CONFIDENTIAL - SUBJECT
TO PROTECTIVE ORDER**

VIDOCQ

SYNOPSIS OF VIDOCQ SOCIETY CASES**207. The Murder of Leah Freeman, 2000**

This case was presented by DA R. Paul Frasier, of Coos County, OR (503-378-6347) and Mark Dannels, Chief of police of Coquille, OR (541-396-2114) with help from Lisa McOwen, OR DOJ and Craig Zanni, County Investigator on 21 Jan 2010. The victim, 15 years old, disappeared on 28 Jun 2000 and her skeletonized remains were found on 3 Aug 2000 and few miles away. Suspicion fell on her older boyfriend who was described as over controlling and infatuated with Leah. The Chief of Police appeared to have hindered the investigation of the case and the investigators found that the high school kids had subscribed to a code of silence about the case. The suspect was found to be deceptive on two polygraphs tests and his buddy was found to be deceptive on knowing about the crime. The suspect and his father were seen burning "trash" during a "no open fires ban" and the suspect's car trunk was completely sanitized with the removal of everything down to the gas tank. Since that time, the suspect has attempted suicide twice when under pressure. Compounding the issue was that although Leah was murdered, the cause of death could not be determined. We suggested that this was a PA organized murder and the tenth anniversary is coming up soon and some publicity may bring out some information.

Richard advises me that after discussion, they realized that the motive for the crime was that the BF wanted to get Leah pregnant, not the other way around, and they must have had a fight where her bloody shoe was found. It was a PA case and PAs hit for the face, therefore blood, and then they surmised that the BF put her in the trunk of the car that he was driving and called his father who came over and switched cars, allowing the BF to drive around being noticed while the father dumped the body. It explains the sanitation of the car trunk and the unauthorized burning and that the BF had an alibi of driving around looking for Leah. His written statements and polygraphs all indicate that the BF was lying about killing her and his buddy was lying about knowing about the case but not having killed her. He told his buddy what happened knowing that he would not "snitch".

Richard says that the DA was very impressed and indicated that they now saw the case in a new light and he may have enough to indict.

Remember, she was on her way to get birth control pills and the BF after the crime impregnated another 14 years old that he could control. ABC is filming the case. The boy friend, Nick McGuffin was indicted in Aug 2010 and the case was featured on 20/20 on 15 Oct 2010. Some changes in the thought process were noted where another girl friend's car was used, not the father's car. Jurors found Nicholas James McGuffin guilty of manslaughter, but not murder. Ten of the 12 jurors voted for the conviction, which indicates McGuffin recklessly killed his 15-year-old girlfriend in June 2000, but not necessarily intentionally. (27 July 2011)

"I kind of lost control," Court-right said. "I've fought so hard for so long."

15698820.1:05472-0677

1
1

VIDOCQ_000009

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TO PROTECTIVE ORDER**

McGuffin will be sentenced Aug. 1. Manslaughter is a Measure 11 crime, so he will face a minimum of 10 years in prison and a maximum of 20. Any sentence will include time served, in this case one year.

District Attorney R. Paul Frasier chose to include manslaughter as a lesser included charge for the jury to consider if it found McGuffin not guilty of murder.

'I did that because I really do not believe that Nick McGuffin woke up that morning and thought, 'I'm going to kill Leah Freeman,'" Frasier said at a press conference after the verdict.

It was a point he made several times during his closing argument Monday.

PEX

Conversation Log

Case # 00N-0481

Date	Individual/Agency Discussed With (Initiated Contact ✓)	Lab Staff (Initiated Contact ✓)	Contact By [phone, e-mail, v-msg, in-person]	Comments
2-1-10	Paul Frasier ✓	Putnam	Phone	Paul called and told me about the Leah Freeman case – I knew that it was being investigated already and we chatted about the case. He told me that they "had the car" that the boyfriend was driving at the time and although it had been processed by Kathy Wilcox it was unclear on exactly what was done. He told me that he had retained Jim Pex and because he was involved initially. Paul told me that he knew that "we hated Jim" and were we going to be mad that he help in the investigation. I told him that we didn't "hate" Jim – I was very disappointed with Jim's current testimony record and found him untruthful at times – I told him that who he chose to assist in an investigation was his decision, OSP had a policy about redoing evidence, but we would continue analysis of any stain found. Paul told me that "Jim would take it down to the frame if necessary". Paul went on to ask about some hairs that had been identified and collected from the tape lifts of the victims shirt – Micro-trace had found them, but now they are at Coquille PD. I told him that if we have standards we would attempt to get DNA off the hairs. We discussed the probative value of the hairs and comparing them to the boyfriend – he agreed that he would have a hard time arguing that they are significant to the proof that boyfriend killed her.
2-1-10	Pat Smith Coquille PD	Putnam	Phone	I returned Smith's phone call. He wanted to know where to send the hairs. The item is Ex 26 I looked on the form 49's in the case and it appears to be tape lifts collected at the scene by Wilcox. I told him that I would check with DNA, but was inclined to have him go directly to Portland with the evidence. I asked if he knew if the hairs had been evaluated for the possibility of having DNA. He read me a little of the report and we agreed that it was unclear – I believe that they just identified the objects has hair.

OSPLab_002777

01/28/10 Debriefing 1500 hrs**Pretext Calls:**

Bruce-Scott asks for Nick's number

"why are they bothering you too?"

S-"Yeah"

"They're bothering everybody"

541-252-1034

Nick-Tells Scott

-say whatever you want

-in reference to the trip to Lee Valley "As far as that part, they don't need to know that"

-They're fucking with me pretty hard

-has told attorney

-re-interates don't need to know about that (trip to Lee Valley)

-you don't have to talk to them

-dropped her off at Cherie's for a couple of hours

-she didn't come back

-Cherie giving her a guilt trip (only reason she went over there)

-not getting along with Cherie

-Cherie talking shit about her

left early because Cherie & her mom got in an argument

**Cherie & her mom telling Leah not to date Nick

-references that he's aware of several people cops have already talked to

-says he's in the Mustang all night (unsolicited)

-didn't have the T-Bird, grounded from it, Dad had the Jeep

-smoked a bowl w/West right before I got Leah

John working on Ricky Crook polygraph**Chief & Lt looked at car:**

Jim Pex willing to go over car again

Pros & cons: Pex doesn't have great relationship with crime lab

He's a blood splatter expert, but how is he at trace?

Credibility w/courts???check w/Paul

Umpqua Forensic Evidence-see what this guy can offer (from the Lt)

-need Paul's input

Lt: phone records

-need a subpoena before they'll even look at the records

??How did Nick contact Dad that night??

Previous subpoena records shows only the 2244hrs call from Fast Mart payphone

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CPD002161

PEX

Kristine M. Karcher
December 23, 2021

1 bones. Is that right?

2 A. That's right.

3 Q. And there was no evidence of fractures to her face.
4 Correct?

5 A. No. Correct.

6 Q. And her nasal bones were intact. Do you remember
7 that?

8 A. Yes.

9 Q. And the bones around both of her eyes, those were
10 intact as well. Do you remember that?

11 A. Yes.

12 Q. Do you remember that her cheek bones were also
13 intact?

14 A. Yes.

15 Q. And her maxilla, that was also intact. Right?

16 A. Yes.

17 Q. And her jaw showed no sign of significant injury?
18 Do you remember that?

19 A. Yes.

20 Q. Okay. Did you review the report from the autopsy?

21 A. I have seen that report, yes.

22 Q. You testified at the grand jury that there was a
23 path in the grass like someone had walked over to the edge and
24 looked down. What was the evidence that you had of someone
25 walking over to the edge?

K Karcher
path in
grass
-edge - look
down

Kristine M. Karcher
December 23, 2021

1 A. I think I said that was a path where somebody could
2 have, but it looked more like an animal path. It could have
3 been either.

4 MS. HENDERSON: If you want to talk details about
5 grand jury or her trial testimony, it might help to pull that
6 up so that we can be precise. But I don't know how much
7 further we're going to go into that.

8 BY MS. PURACAL:

9 Q. Ms. Karcher, I'm showing you what we have marked as
10 Exhibit 2, which is your grand jury testimony.

11 A. Mm-hm.

12 Q. It's page 20 of the PDF. It's page 146 of the
13 transcript. From line 1 it says -- you're testifying here at
14 the grand jury, and you say "The other thing that was
15 noticeable when we came was it looked like there was a path
16 that somebody -- the grass was tall along the shoulder of the
17 road, but that area it looked like there was a path; that maybe
18 somebody had walked over to the edge and looked down."

19 Do you -- and you also said "It could have been an
20 animal coming back and forth."

21 I'm focused on this part, this part that you say
22 "that maybe somebody had walked over to the edge and looked
23 down." What was the evidence of that?

24 A. Well, there was -- any time you find a body
25 that's -- that's out in the woods or in foliage and there's a

Kristine M. Karcher
December 23, 2021

1 path to it, you have to consider that that's -- some person
2 might have walked on that, and avoid walking on that area.

3 So we all noticed the path, and it could have been
4 from somebody walking on it. More than likely it was an
5 animal, but it could have been either. So we had to treat it
6 as if somebody was walking, if there was evidence that might be
7 there in that path.

8 Q. And what was the evidence that somebody had looked
9 down?

10 A. Well, the only reason you would walk over to where
11 the path was was to look down. I mean, you're right on the
12 edge of the -- the embankment. It would just make sense that
13 that's what they were doing. And that's just a -- that's just
14 a theory. It's not -- we didn't see anybody there looking
15 down, but there would be no other reason for you to be there in
16 that spot.

17 Q. So did you have any evidence to actually
18 corroborate the idea that somebody walked the edge and lo
19 down?

20 A. No.

21 Q. There's no mention of this path or somebody walking
22 to the edge and looking down in anything prior to grand jury in
23 2010. So how did you remember that detail for those 10 years?

24 A. That's the reason that we found the alternate path
25 was so not to disturb the path above the body. That's why we

the only reason you
would wait our
(there) was to look
down
it would just
make sense

Kristine M. Karcher
December 23, 2021

1 went down the road and developed a different approach to her
2 body, so that we wouldn't disturb that path until they could
3 assure that there weren't footprints or some pieces of evidence
4 within that path.

5 Q. So who was it that was responsible for processing
6 the path?

7 A. It's Lieutenant Pex, and he described that in
8 his -- I believe it's where he's describing the texture of the
9 dirt and the gravel that wouldn't pick up footprints or tire
10 prints. So he ruled that out.

11 Q. He ruled what out?

12 A. He ruled out the fact that you could not obtain
13 evidence from that foliage or from the surface of the ground
14 there. It would not take tracks or tire prints.

15 Q. Okay. So I'm going back to Lieutenant Pex's report
16 which we've got marked as Exhibit 9 here and --

17 A. If you go down to "The area surrounding the body
18 and below," it says "Our own shoe impressions from walking
19 along the roadway and walking in the designated trail to the
20 body do not" -- they could not pick up shoe impressions.

21 Q. Okay. I'm understanding what he's talking about
22 here is the path that you all walked to the body.

23 A. I think it's the same ground, that it's not going
24 to pick up shoe prints.

25 Q. Okay. My question is who processed this other path

Kristine M. Karcher
December 23, 2021

1 that you're saying where somebody came to the edge and might
2 have looked down? Who processed that path?

3 A. I didn't say anybody walked over there and looked
4 down. I said it could have been a path that somebody could
5 have walked on for the purpose of looking down. There was no
6 evidence in that path, nor did Lieutenant Pex find any evidence
7 in that path, that anything other than -- we couldn't even
8 prove that it was an animal path, let alone a human path, but
9 it was there, and we made note of it and worked around it.

10 Q. Where did you make note of it?

11 A. In our -- in our development of a different
12 approach to the body.

13 Q. Okay. So when you say "made note of it," that's
14 not something that you documented in some way?

15 A. No. Not with pen. We didn't -- I didn't make note
16 of it with pen. We, on the scene, noticed the path and then
17 found a different route in to Leah's body.

18 Q. Did you alter -- and I think we talked about this
19 before, but my understanding is that you didn't alter the
20 position of the body in any way before it was extracted from
21 the scene. Correct?

22 A. Correct.

23 Q. And you didn't see anyone else alter the position
24 of the body before it was extracted from the scene. Correct?

25 A. Correct.

10-13-09

Q20001905

Bruce McGuffin - report

Susp: Nick McGuffin/Brent Bartley

Loc: N. McGuffin-Church Rd, CB
56246 Baker Rd, Coquille (McGuffin's rent)
B. Bartley- 1155 W Anderson, CBVeh: ZTA378 Sil Dodge Stratus (N.M.)
D10958 '94 Ford F35 PU (B.M.)
HND386 Blu '77 Chev PK (B.B.)

mtg:

Pictures - still missing some (Crime Lab) → Brad
Kris K - no response on the clothing
was sent to England, trouble getting
it back

ViDuct - retired L.E.

Present to them for ideas & suggestions
2 going NOV. 19, 2009Mike Stupfel did a diagram - looking for
his work. has located a case
file - 5 reports, but not his work
* boogie Earth or go to site & reconstruct
VanZey helped Stupfel w/ the diagram
Dale Oester did a report / Oester has a
hand diagramLooking for Stupfel
diagram

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CPD020539

Riddle will make a copy?

- Nothing @ his o/c

Sean will check thru the case files again for the missing diagram

Pat - Contact Dave Hall see what he has

Pat D - Will check CCSO file

FBI - Analyst for Nick
TIPS Management

Web Page - one central tip line off the City web page

Stay Away from Private Leah Freeman
Page - more control

Greenacres Auto Wreckers -

67 Ford Mustang - 4 (one has been Eliminated)

Other 3 don't match color concept

1 title still reg to original owner doesn't remember name

Greenacres will hold the cars

Ops Plan -

Focus - Nick McGuffin

Branches to Father - Report w/ his
Thoughts (2005)

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CPD020540

Kelly met w/ Bruce & he turned in report. Also turned in a letter from someone in jail

Tap on phones - Still waiting when go public

2 people to interview Nick
Dad + Mom Approached Chief
hoping he will clear son - Uninvited to their home - this week

"Hi, I'm here to help"
If Nick is there - Taking Pat w/ him
Get a feeling where they are at

Brent Bartley - Bonnie Chamley G.F.
No longer best buds → Paranoid
Dopers
Goes to jail

Interview Chamley

Safeway employee ex of Bartley - Cop friendly

Edgerton
Megan - Nick's Current G.F.
Living w/ him since 18yrs
Interview

Wayne McGuffin - In Hawaii
- Anti-Cop

Traye & Ray Johnston - Campers who
witnessed car pull up in
area where body was found

Nick & Brent failed Poly

Brent Weak Link

Nicole Marie Nelson (Price) ex. of Brent

Mom left out of loop

Kristin Steinbock ^{Ramsey} > Same Circle / Same Stories
Alecia Michaud > Spread rumors

Driving Nick Around Part of Night
Nick tried to Sleep w/ her? ~~*Claim*~~

Sara Swenson
~~Mindy~~

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CPD020542

Denise Freeman (Bertrand) Sister
Cory Courtwright
uncle

444 Elm - Where Leah last seen by
Sherrie Ann Mitchell
Corey Brigant (BF @ time)

Johnson Mill Pond (Nick + Brent)
Witnessed by:
Fast Mart

Bill Sero
Stemmerman > poss Susps)

Leah's shoe found on Elm - Near CHS
Poss last seen per witnesses walking
→ there
Found by Tony Messerle

9:30-9:45 Nick seen in T-Bird

Mary Fuller & Alecia Hartwell 9:30 saw
Leah @ CHS

Nick never mentions Changing Cars - Called
his mom @ 10:30 to see if Leah

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CPD020543

10pm back in Mustang

Never looked for Leah @ house
light in bedroom @ 2am
threw rock & no response

No explanation of Changing Cars

Mom's red T-Bird

Upset frantic point of Crying

Other Shoe (lft) found on Hudson ridge

Nick has never been locked into a Sony
- Always said she was Missing
- never that she was just around
Someplace

Trunk Cut on - Shiny metal no Carpet
- remove leaking gas tank

Willberger-Courtney ^{Joel} Susp pass in the area
During time of Leah's death
Get hold of Paul Foster & see why
he looked @ Courtney

Remove leaking gas
tank
10/13/09

Body kept in Car only to transport to
dump site - Lee Valley

- Leah poss env to Bartley Grandparents place

Poss Dumped by Dad - Reason why Nick
Switched to T-Bird?

veg + broke down
by road

Wit heard 2 voices (male)

Leader thinks 2 people dumped body
from Car - Zanni believes he's right
Not spot in Road to get out Chat or
Take a leak
Vegetation not broke down by road

Mustang not driving around after 9:30pm

Rt Shoe found by CHS

- Planted

- Lost when trying to get out of Car

Left Shoe on Hudson Ridge had blood
Rt Shoe no Blood

Brent inv in helping dad dump body?

* Interviews *

Mike Tuller - Worked w/ Nick @ Brandon Dunes

Mike
Cook

Bon fire on Baker Rd - People who were
Afraid to come forward
Bentley talked w/ some of them
Someone told a little kid you didn't
see anything

Kerry L
~~Atan~~ Torres - Ex of Brent
6-10-64

ODL 3464320

1st - Phone Tap

- Nick

- Diff to get one on Dad

Nanny Cams in interview room - 2 @ CQPD
myrtle point has the set up
OSP has one

Chief * Pat - Informal mtg w/ McGuffin
family this week

Hit Bentley ~~old~~ - Not until gone Public
Day we go before it hits media

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CPD020546

Interviews

Bartley- Riddle & Kelly Andrews

Torres- Ray & Bob # before Bartley # Day B4
get perspective

Johnstons- Sean

Chamley- Day of also: Rogers + Schuen

* Prepared Grand Jury Subpoenas before going
to interviews - Zanni

Fraser- Immunity letter (Statute of limitation) ^{Passed}
- Not to Active participant
- only helped cover up some way

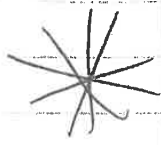
Tap- Equip ready in Salem & Available

Bill Fugate - OSP Det Sgt in Roseburg

* Me-Do Packets on Inv

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CPD020547



07 Mustang Cp - Trunk linings
- get types of options

Stemmerman + Sero's Cars

Stacey Napier Car

Heather Steinbock's Car

Crook's Car?

Plc ~~Geo~~/Kia

Stemmerman's house in Libby backhoe
back yard - Tomorrow 12/14/09
2 places to dig

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CPD020548

LAB # 00N481
PAGE # 3
INITIAL JP
DATE 8/4/00

00N481 – F.I.
August 3 and 4, 2000

It is August 3, 2000, at 4:50 p.m. Bonnie Bertak and I arrived at scene approximately 1 mile east of the Lee Valley Fairview Road turnoff and we are meeting with Detectives at this location.

This is Lt. James Pex and I am going to record information on the scene.

The roadway is a gravel road that is headed Eastbound. We are probably 1-½ miles from the junction where Lee Valley Road connects with the main road that goes between Coquille and Four Corners.

The site exists of a very timbered area, tall grass along the roadway, overhanging trees. The area was secured by a BLM Ranger and members of Coos County Multi-agency search team.

The body is located off the bank, I would say 20 to 30 feet down a steep embankment. From the roadway the only thing that is visible is blue jeans, there is an odor of decay obviously apparent. Beside the roadway we have observed a bottle cap, a beer can and cloth. These items are spread along the roadway, not unusually for a well traveled area. These will be seized.

A path will be prepared along the side hill going to the body and we will extract the body in a body bag and transport it for autopsy. Several photographs will be obtained using 35-mm and video film prior to that extraction.

AT 6:00 p.m. we created a trail at a diagonal angle down below the bodies, we took photographs and extracted.

The area surrounding the body and below is all covered with leaves and detritus not readily applicable to shoe impressions at this point. The roadway up above is not also applicable to shoe impressions or tire tracks. Very hardway with gravel shoulders and dusty at this time. Our own shoe impressions from walking along the roadway and walking in the designated trail to the body do not show up. Therefore I wouldn't expect any others from an earlier date and time to show up either.

After the body was removed the area underneath the body was searched and then a methodical search was conducted up the upgrade leading to the roadway. Grass was pushed aside, the soil there is very hard and rocky and did not lend itself to shoe impressions again. No evidence was found coming up the hill. A distance was measured between the edge of the roadway and the body was 20 feet. One old beer can and some broken glass were noted near the body, these were also seized.

lab report of
finding body

00N-481 – FI - August 3 - 4, 2000
Freeman, Leah
Page 2

LAB # 00N481
PAGE # 4
INITIAL LF
DATE 8/4/20

In a continuation of the search, screens were used and the area under the body was sifted for trace evidence and particulates. Several items and evidence were seized from along the roadway and these packaged, sealed and transported back to the laboratory.

We cleared at 7:15 p.m.

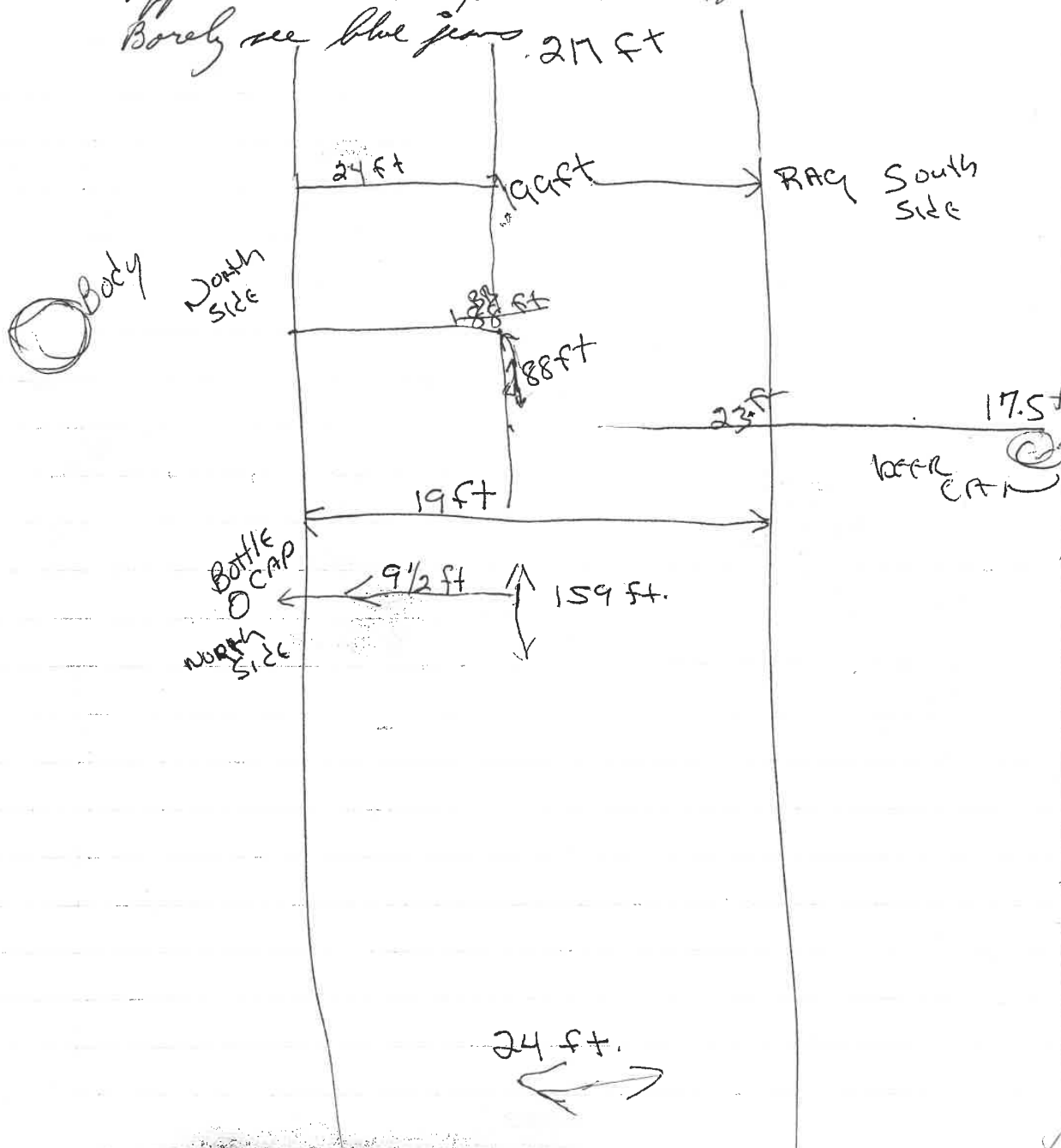
The distance between the junction of Fairview Road in Coquille and the scene was 7.9 miles. The distance between the Fairview Road Junction in Coquille to the turnoff at Lee Valley Road is 7 miles. The distance from the junction of Lee Valley Road and Fairview Road to the scene is just under 1.2 miles.

On August 4, 2000, at approximately 9 a.m. I returned to the scene. Deputy Summers had taken a brush cutter and cleared away all the brush and weeds beside the roadway close to where the body went over the embankment. He also cleared away all of the leaves all the way down to the body, and approximately 20 feet on each side of where the body was lying. We did a detailed search of the area and came back with a metal detector, covered the area.

Walked approximately 100 yards in each direction on the roadway scanning the area with a medical detector along the side of the roadway on the north side. A couple of beer cans were located in the underbrush near where the body was found. These were seized. A 7-up pop can was also located about 50 feet east of where the body was found that was also seized.

LAB # 00N481
PAGE # 5
INITIAL JP
DATE 8/7/00

on same 4 ⁵⁰
5^{PM} on scene, body down over the hill
to north of roadway. Road was gravel
plants crushed next to roadway above her.
Difficult to see her, she is in the shadows.
Barely see blue jeans. 217 ft



LAB # 00N481
PAGE # 6
INITIAL *g*
DATE 8/14/00

get distance from junction to site

going down to get body At bpm
8.3.00

Body placed on plywood inside body bag + sealed
+ evidence tape on the zippers.

Body - blonde hair, one sock, blue denim pants
cotton top.

Did adhesive tape lifts on pants + shirt
at scene prior to removal.

dig dirt under body + sifted it
searched hillside above body by hand
no blood, shoe prints or other evidence

8/14 9th returned to scene, grass + weeds cut by
Ron Summers (SO) from road down to body
site. Searched again, then went over it w/
metal detector.

Some cans were seized.

Parts of deer + bloody cardboard \pm 100' west of
body on roadway. Sample obtained to be sure
it was deer blood.

10³⁰ cleared from scene

video KK

006729

43
006729

ILLE POLICE DEPARTMENT PROPERTY REQUEST

Case Number: 00-1905
Requesting Officer: HAU

Date Requested: 3-21-01
Date and Time needed: 3-22-01

I request the items listed below for: KRIS KARCHER Approved By: [Signature] 3-22-01
(State Reason)

Property Controller Use Only:

Item #	Description
1 <u>224</u>	<u>VIDEO TAPE CRIME SCENE</u>
2	
3	
4	
5	
6	
7	
8	
9	
10	

PROPERTY TRANSFER

Date: 03/22/01

Case Number: 00-1905

The following item(s) was released to: Kris Karcher For Deposit With

Court: _____

(Department/Division)

District Attorney: Kris Karcher - DME

(Name/Title)

Laboratory: _____

(Name of Laboratory)

Item Number: _____
(from above): _____ Description of Property _____

Signature of person with whom property is deposited: _____

Date and time property is transferred or returned to property room: _____

006729

006729

006729

Notes
by Cool

8/4/00

18 05

Debrief

Zanni/Downing — Michael — got lawyer
from Rehab — Lawyer — David Terry —

Dale Oster — Justin/Brandon Shelton —
heard about party — didn't go —
R. Bryant Davida Jenkins Aaron West
were going to go —
Δ ~~was~~ ^{Saw} witness day after —
crying/suive —
Ryan David McNair — Come over
on 28
Sero met —

Heidi Crook — last seen getting into
white Toyota P/u — w/ Guy name Steele —
has pager —

Davis/Miller Skylar McNair w/ Pizzola Davidson
walking — mid school Soccer field — beer —
Not at T.J.'s party —

Matt Sinnott — party on 20th
25th Wayne McGuffin — party —
threw them out — Chained Drive —
later that night → Nick — Wayne

CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER

CPD000306

Perste/Miller - Megan Pinkley - Sarah Smith -
 2030 - 2330 → sees Nick after 2700 -
 comment - Leah - stalked/shoot not Nick
 strangled / Beat - then it could have
 been -

Ruth Clausen - Bill Sever - called last
 night - wants to wait till he is
 sober (off Dope) before talks to Police

Rep { 1830 - 1900 at Bartley's house -
 TBartley { Bartly Not there
 Brandon Johnson + Michelle
 A. Michaud -
 Anthony
 Ben Harvey

0700 29th Nick Shows at T.J. Greve -
 looking for Leah

Rachel Harvey - Nick Fan -
 Ben in California

Patty Harvey - Tana Smith possible friend
 of Leah -

Nick Theory
 Talked about business man from Portland
 + van harassing people

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD000307

Maggie Dawns - Friends w/ Denise -
28th - ~~2000~~ - 2000 2100 - Max Rest work

2100 - 2130 - talked to Denise at Dawns

Between 2130 - 2200 - sees Nick at
Fast Mart

2230 Home -

Didn't see Leah at all

29th - 0900 call from Denise -
Search out to Laverne Port
Powers

Coos Bay -

Mike Pizzola Rick Crook Aaron Kenny

Apit - Paps Smear - yearly exam -

Nick comment - Acid in town -
Leah couldn't handle it put in Dr. H

21st Matt Nelson Big Pick up on
Elliott - @ John Lindbergs house

Mike Pizzola - Sr Jr Rick
 ↳ Saw Nick + Leah fighting
 at Exxon Station -
 yelling at Leah -
 week or 2 before 6/28

Pizzola, Jr - Swimming - until five -
 doesn't remember after 1700
 Does know Ser -
 last saw 24th prior to disappearance

Stemmerman - Libby Dr - spoke about Ser
 ↳ might help w/ Ser

Frazier: Deadline on immunity until
 1700 on Monday -

Laure - SCINT - left free number
 wrong -

Autopsy - Unknown Homicidal violence
 No bullets - No marks on ribs

Positive ID - forensic dentist -

No under pants

{ muscle piece for tox -

missing sock - ankle high - ankle high Adidas 3 stripes

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD000309

Mark notness - HS V.P. - day in school -
complete file on monday - Nick

Camera at crime scene -

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD000310

From: R Mcneely [rmcneely@cityofcoquille.org]
Sent: 2/5/2010 9:48:37 AM
To: Assmus, Brian [Brian.Assmus@state.or.us]; Riddle, John [John.Riddle@state.or.us]; Bowersox, Teresa [Teresa.Bowersox@state.or.us]; Webb, Bob [bwebb@ci.bandon.or.us]; Webley, Chris [cwebley@cityholderfield@cityofcoquille.org]; Dannels, Mark [mdannels@cityofcoquille.org]; Sr [psmith@cityofcoquille.org]; Sanborn, Sean [ssanborn@cityofcoquille.org]; Looney, Dan [dlooney@ciandrews, Kelly [kandrews@co.coos.or.us]; Karcher, Kris [coosme@co.coos.us]; Frasier, Paul [pfrasierMcOwen, Lisa [lisa.r.mcowen@doj.state.or.us]; Zanni, Craig [knizzi@mycomspan.com]; Schwenning [eschwenninger@police.coosbay.org]; Kirby, Michelle [mkirby@police.coosbay.org]; Rogers, Scott [srogers@police.coosbay.org]; Tabor, Mike [mike.tabor@state.or.us]; Leader, Larry [sueleader@verizMike [mktcook@webenet.net]; Kinney, Patrick [pkinney314@yahoo.com]
Subject: Updates

gas card
phone records

Just some new information to keep everyone in the loop.

Pat Kinney found out that Nick McGuffin is dating a new girl by the name of Kyla Danae Stevens, DOB 2-23-90.

John Riddle found an old document from June 29, 2000 at 0212 am from Bruce McGuffin's gas card being used at the pumps off 42 by 42 S.. Lisa can we add this to the time line please.

We did find some records on the phone booth that was located across from the high school, looking into that.

The briefing from 2-4-10 went over the following stuff for the people that could not make it.

Ricky Crook did do the polygraph, but did not pass, sort of. Dan Looney can tell you about the sort of. Denise Freeman told her mom that the two officers who talked to her changed her outlook on police and the case, they were very nice and professional. Vehicle processing is 2-5-10 at 1000 hours. Micheal Tulles interview turned out to no notable new leads. Dan Looney found out some new info. on Zach Elderton, purple Kia owner, that may lead to some good stuff. Daniel Lapine did do an interview, but must his info. was on Bill Sero, except he did say Brent Bartley was not telling the truth about his time line back on June 28th and 29th, which is the same thing Lapine told detectives back in 2000.

Sean Sanborn will be in charge of any new tips and the current tip sheets. Chris Webley will be in charge of anything related to the Bill Sero angle. All other stuff can continue to go to Chief, LT, or I.

Next briefing is February 26th at 0900 hours.

Pat Smith and I will be out of town from Feb. 9th thru the 12th for the major crimes team conference in Eugene. Sean Sanborn will be out of town from Feb. 6th thru the 12th. Any info. needs to go to Chief during this time.

THANKS FOR ALL YOUR HARD WORK!!!!

CONFIDENTIAL

OSP002416

01/28/10 Debriefing 1500 hrs

Pretext Calls:

Bruce-Scott asks for Nick's number

"why are they bothering you too?"

S-"Yeah"

"They're bothering everybody"

541-252-1034

Nick-Tells Scott

-say whatever you want

-in reference to the trip to Lee Valley "As far as that part, they don't need to know that"

-They're fucking with me pretty hard

-has told attorney

-re-interates don't need to know about that (trip to Lee Valley)

-you don't have to talk to them

-dropped her off at Cherie's for a couple of hours

-she didn't come back

-Cherie giving her a guilt trip (only reason she went over there)

-not getting along with Cherie

-Cherie talking shit about her

left early because Cherie & her mom got in an argument

**Cherie & her mom telling Leah not to date Nick

-references that he's aware of several people cops have already talked to

-says he's in the Mustang all night (unsolicited)

-didn't have the T-Bird, grounded from it, Dad had the Jeep

-smoked a bowl w/West right before I got Leah

John working on Ricky Crook polygraph

Chief & Lt looked at car:

Jim Pex willing to go over car again

Pros & cons: Pex doesn't have great relationship with crime lab

He's a blood splatter expert, but how is he at trace?

Credibility w/courts???check w/Paul

Umpqua Forensic Evidence-see what this guy can offer (from the Lt)

-need Paul's input

Lt: phone records

-need a subpoena before they'll even look at the records

??How did Nick contact Dad that night??

Previous subpoena records shows only the 2244hrs call from Fast Mart payphone

Phone 2244
from Fastmart
- Δ to mom
look for Leah

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002161

02/04/10 Briefing @ 0900 hrs

20/20 left messages with Chief & Paul. Chief called them back.

Mike-Saturday afternoon Cory called him very excited.

-Denise came over and told her mom that the 2 officers who talked to her changed her outlook on the police and the case, they were very nice & professional

-Denise apologized to her mom & their relationship has been restored

Chief-Lisa is updated charts

Dan-Ricky Crook polygraph

-did not pass, sort of:he may have smoked pot before he came in

-is adamant that the machine is wrong

-door still open to talk to him again

-three different versions same questions, would not pass, sort of pass, and pass

-scored as deceptive, but weird

-questions:Where you involved & have you lied or left out anything

Kristin Steinoff interview hasn't happened

Zach Elderton-the purple Kia owner

-right after Leah incident went to Alaska & recently moved to Rollins, MT

-checked him on My Space, sent him an email last week, has not replied yet

-Riddle got a phone number for his ex (mother of his child), she told Dan that Elderton will not return to Oregon, afraid of some type of trouble, wouldn't tell her what

-Need a face to face w/letter of immunity in hand. Estimate a four day trip.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002169

Stemmerman-not willing to call Dan back

-Paul:serve him w/a grand jury subpoena?

Dan will attempt to call him back today.

Chief:Vehicle processing

-Kris & Pex will be processing the vehicle tomorrow @ 1000 hrs at the storage unit

Kris-Update on clothes in England

-email from Friday, thought they'd be able to mail them the beginning of this week, haven't heard from since. Was still having problems with Customs

Chief-phone records

-we got them, hard to decipher

-Paul, lots of texts

-Nick on the phone all the time, it's in his Mom's name

-Nick started calling @ 1015 hrs, about 5 mins after Chief & Lt left after notifying him that the case is being re-opened

-Lisa will do follow up on the numbers

-Evidence to the lab

**don't have standards on Leah & Nick

**they have the DNA profiles

-they will be examining the lifts

-sending off on Friday

Paul-Umpqua Medical records

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002170

-subpeona out, nothing back yet

Riddle:Brent Bartley

-spoke with Nylander last Thursday

-Nylander is leaving for Hawaii today

-they have the immunity letter

-interview will be set up after the 13th, mom will be present

-Bartley wants to talk to us

-attorney need to find out what Bartley has to tell us

-Nylander feels he knows something

-Bartley feels he failed the question "did you see Leah after she was dropped off at Cherie's", he did

- "Nick was scared shitless" statement Bartley made to Ranger

-Needs to have explained to him what the letter of immunity means

Ray:Scott & pretext calls

-Scott not comfortable calling Nick back after 2nd call to Bruce. If Nick calls him he either won't answer & call the police prior to calling back or will say he's at work & will call back later.

-doesn't want to call Kristen, but we can use his name with her

-let's see if Nick calls Scott back

Chief:follow up with Cherie

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002171

Pat-no new information, couldn't decide which cars he was driving

Chief-Cherie & her mom didn't tell Nick about the argument

Megan-reassign interview

Ray-Megan has a new boyfriend according to her Facebook page

Chief-Nick is always home alone in the morning

Bob Webb turned in his report

Thomas Bounds:cousin of Leah who saw her at the high school & on the payphone at the gas station before she disappeared

-Chief advises that where he was living almost a direct shot to the gas station

-Cory doesn't know if she was told about him seeing her, she was a mess and just doesn't remember

Ray-running down who had the payphone

-Barb running it down through tax records

-get the number for the booth

-possibly calling Bartley's house?

Ray:Micheal Tulles

-guy confessed at a bar that Nick was doing white dope, ran Leah over, stabbed her 30 times, and cut her up with a sawzall

Quin Myers:Dan Lapine's girlfriend

-worked at Claire's

-went to Dan's house that night after work

Cops know Leah calling
Bartley looking for
Nick

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002172

- Nick showed up & asked her if she'd seen Leah. Leah had no reason to be there
- Nick seemed pissy
- not sure what car Nick was driving but Ron Slagle would know
- 29th: Bill Sero & Nick looked for Leah together, Bill left his sweatshirt in the Mustang
- night of the 29th: She was at Dan's house w/ Bill Sero & Alisa
- they watched Deuce Bigelow
- Nick came by again
- Alisa breaks down & starts crying
- Quinn left about 2330 hrs
- Sero got arrested later (in the early morning hours) & had Alisa with him
- Josh Thompson would know some stuff
- walking with Ron Slagle a week later, saw Kristen pulled over in front of the now Police Department, she was acting weirder than usual.
- Dan Lapine told her that Sero admitted killing Leah

Ray & Chris: Dan LaPine

- pretty guarded
- reported to Ferry the next day & met them in the back office at P&P
- told them a year after Leah's death, Sero coming down "said he snapped her noodle", did mention a name, they just assumed Leah
- told Quinn to stay away from Sero right after that
- Bartley's statements don't match what he did that day
- was doing acid back then, memory is spotty

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002173

Others to talk to:

Erika Davidson

Maggie & Ann Yoakum

Anthony Fowler & Tj

Willie Teel

Chief-someone will continue to run down the Sero angle

-Sero passed the polygraph

-Nick & Sero searching for Leah the next day together

-talk to Sero & make it clear that Nick is throwing him under the bus

-do same with Stemmerman

-need buccal swabs & hair lifts from both

-Paul advises they are already in CODIS

Working on organizing the notes and assignments-detail it out.

Packets:

Ron Slagle-John Riddle

Brent Bartley-John Riddle

Megan Edgerton-Bob Webb

Scott Hamilton-Ray McNeeley

Needs Packets:

Dan Lee, Mike Reeves, Dave Hall, Zavala

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002174

Elzie Shamblin-lived in apartments, there's a whole report from Zanni

Paul-Grand Jury end of March??

-present it as a mini trial

Next briefing February 26 @ 9am

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002175

WHITE — MASTER
YELLOW — WORKSHEET
CARD — FILE

OREGON STATE POLICE

PRIORITY

A

B

SUBJECT INFORMATION

MAKE NO MARKS IN THIS AREA

LAST NAME Jenkins, David	FIRST NAME	MIDDLE NAME	DEPT.	DEPT. #	SID
NICKNAME OR ALIAS	SOG. SEC. #			FILE NUMBER	
HOME ADDRESS 1164 N Grape #4	CITY Cog.	STATE OR	ZIP	HOME PHONE 396-3474	FBI #
OLD ADDRESS(ES)	GLASSES			FACIAL HA	

EMPLOYER/ADDRESS	CITY	STATE	WORK PHONE	OCCUPATION
RACE	SEX	D.O.B. 11/7/77	PLACE OF BIRTH	AGE
DR. LIC. #	STATE	VEH. YR.	MAKE	MODEL
VEH. LIC. #	STATE	CONDITION/EQUIP.		OTHER VEH/PLATE(S)
CONCISE TIP INFORMATION				SOURCE NAME/XREF

Interview w/Peet on 9-5-00 Zanni/Dowling
Info from Peet was that on 8-22-00 she was at Michelle Emley's Apt. behind Safeway, when she overheard conversation w/ Nick McGuffin & David Jenkins, where David asked Nick about him getting carried away with strangling Leah.

SOURCE INFORMATION

MAKE NO MARKS IN THIS AREA

LAST NAME Peet	FIRST NAME Kim	MIDDLE NAME R.	A.K.A.s
RACE W	SEX F	D.O.B. 05-24-86	HEIGHT
ADDRESS 1164 N. Grape Apt #6	CITY Coville	STATE OR	ZIP 97331
HOME PHONE 396-7045	WORK PHONE	DEPT.	DEPT. #

ADDITIONAL INFORMATION

Interview w/Jenkins 9-21-00 Zanni/Dowling
Jenkins was interviewed at CTS on 9-21-00. He did not admit that he was at party at Michelle's (his residence also). At party was David's Richard Bryant, Michelle, David and Misty (David Bryant's GF). There was a conversation between David Jenkins & Richard Bryant about Leah, because Richard had heard a lot of stuff from his Dad and was

RECEIVED BY Slabbing his mouth.	DATE David spoke with him	TIME	COMPUTER CHECK BY	DATE	TIME
ASSIGNED TO Zanni/Dowling	DATE 11/10/00	SUSPENSE DATE	CCH	CRIS	NCIC

Richard Bryant
145 from Sup
Dad, Don't have

003213

003213

ASSIST OUTSIDE AGENCY - HOMICIDE
VI/ FREEMAN, LEAH NICOLE
OSP #00-255176

Oester

Hamilton -
not right place
- no diagram

003213

11 of 17

17

ACTION TAKEN: (Continued)

HAMILTON stated that he was really uncomfortable at this point and wanted to leave. Nick came back up the bank and he had a picture of Leah in his hand. He was crying and looking at the picture, then walked up to him and hugged him. (HAMILTON) Nick was saying that he could picture Leah laying down there with her head on a rock. HAMILTON stated that this really freaked him out and he started walking back towards the car. Nick started walking with him and by the time they got the 20' back to the car Nick had quit crying. They got back in the car and Nick then drove on up to Chris's.

HAMILTON stated that this made him so uncomfortable the he no longer associated as a close friend of Nick McGUFFIN. He knows that McGUFFIN is hanging out with Ricky CROOK and that they're smoking lots of "crank".

Nick doesn't drive the Thunderbird anymore because he fell asleep and wrecked it on Fishtrap Road awhile aback.

At my request HAMILTON agreed to return with me to where the victim's body was found to point out where McGUFFIN was indicating the body was located.

At 3 10 p m, I transported Scott HAMILTON to Lee Valley Road and had him direct me to the location where McGUFFIN had left the road and gone down over the bank.

HAMILTON pointed out the spot McGUFFIN indicated to him as where victim's body had been found. (This was not in fact the actual location.) HAMILTON also stated that the night this happened, Nick was walking around and walked out of sight a few times towards the river.

At 3 45 p m, HAMILTON was transported back to his residence and I broke contact with him. (Refer to hand drawn map from my notebook.)

From this point I have taken no further investigative actions. Unless specifically requested I do not anticipate further action being taken on this case.

003213

003213

003213

3:10/P - TRANS SCOTT
TO LEE VALLEY RT.
DIRECTED TO DOWN SITE
WHITE CROSS THERE

POINTED OUT SPOT NICK
LOOKING AROUND. ABOUT
6' CLOSE TO RIVER
FROM WHERE BODY & REMAINS
ALSO WATCHED OUT SITE OF
TOWARD RIVER



hand drawn map
with cross
detail

3:45/P - DROPPED AMMO

JAP/VA

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD007281

Brakefield

Page 113

1 Q. When was the Grand

2 A. I -- I don't remember the specific date, sir.

3 Q. Okay. Was it early in the investigation in
4 2010?

5 A. No, it was -- we had basically concluded the
6 investigation and Mr. Frasier was presenting it to
7 Grand Jury.

8 Q. So the decision was made to present it to Grand
9 Jury for indictment before Brakefield came to your
10 attention, is that right?

11 A. I'm trying to think if we did two -- from what I
12 recall, that's because the McGuffins were there under
13 subpoena and Wayne flew in from Hawaii, so I -- from
14 what I recall, it was during that timeframe.

15 Q. Did you have any trouble tracking down
16 Mr. Brakefield?

17 A. I mean, it didn't start with Brakefield, so I
18 remember it taking me and Webley a few days, but I
19 don't remember, because we started with the name the
20 McGuffins gave us. That led us, I believe, to another
21 name, and I think that went to Brakefield. But I don't
22 remember if there was another person -- layers, if you
23 will, in between that that led us to Brakefield.

24 Q. Okay. When you did find Mr. Brakefield, did he
25 express any reluctance to talk to you, or was he a

Stumptown Steno

503.888.1416

1 cooperative fellow?

2 A. In the beginning I would say he was cooperative,
3 but then I would say later he was -- didn't really want
4 to go testify, so.

5 Q. Did he say why?

6 A. I know he got a little upset because we wanted
7 to polygraph him, like we didn't believe him.

8 Q. Okay.

9 A. But Dannels, Frasier, and myself felt that his
10 information was important enough that we should
11 polygraph him to make sure he just wasn't being
12 vindictive, you know, to Nick.

13 Q. So then was he polygraphed?

14 A. Yes.

15 Q. And what happened with the results of that
16 polygraph? Where were they kept?

17 A. I don't know. I just know I was told he passed.

18 Q. Were you present for the polygraph?

19 A. I don't believe I was. I don't recall being
20 there.

21 Q. Okay. Do you recall Mr. Brakefield saying to
22 you or Officer Webley at any time that -- so Brakefield
23 had said that Mr. McGuffin made some kind of admission
24 to him or something like that. What was Brakefield's
25 testimony? What was the substance of this info?

Page 115

1 A. I don't remember the exact wording, but
2 basically it was -- I remember Paul Frasier calling it
3 basically the confession.

4 Q. Okay. And do you recall Mr. Brakefield saying
5 to you or Officer Webley -- telling you that he didn't
6 take what Mr. McGuffin had said seriously and that
7 considered it a joke?

8 A. I don't -- I remember in trial that his
9 attorney -- I remember thinking at trial that his
10 attorney could've got that from him and the attorney
11 didn't. He -- but I don't remember him saying that in
12 like -- I'd have to look at a report to refresh my
13 memory on that one.

14 Q. Okay. Did Mr. Brakefield have an attorney with
15 him at trial?

16 A. No, but Nick's attorney when he questioned
17 Brakefield.

18 Q. Oh, okay. All right. And if Mr. Brakefield had
19 said that he didn't take it seriously and that he
20 thought that Mr. McGuffin was joking or whatever, you
21 would've written that in a report, or Webley would've
22 written that in a report?

23 A. Webley would've. I didn't write the report.

24 Q. Okay. So Brakefield, Hamilton. And then
25 as old leads go, it's just everybody that had

Δ Consider a
joke
-like mcy
"I shot the clerk"

Webley would have
written report

Stumptown Steno
503.888.1416

001192

001192

001192

26

OREGON STATE POLICE INCIDENT REPORT

PAGE 1 of 7

REPORT TYPE:

☐ INITIAL REPORT
☒ SUPPLEMENTAL

DISTRIBUTION: ☐ GHQ Criminal ☐ GHQ P&W ☐ GHQ Patrol
☐ ID Documents ☐ ID Prints ☐ District ☐ Explosives
☐ Lab ☒ DA COOS CO. DA.
☒ Other COQUILLE POLICE DEPT.
ATTN: RAY NICHOLS

 INCIDENT # [CAD#]
SP20-255176

ASSOCIATED OSP #s/

OTHER AGENCY #s/ COQUILLE PD. 00-1905OFFENSE/ORS/ MURDER 163.115Occr/ 1 Col/ COOS Status/ ACTI
 STATUS/ ACTI-OPEN/ACTIVE INVESTIGATION CLOS/A-CLOSED BY ADULT ARREST CLOS/J-CLOSED BY JUVENILE ARREST COMP-CLOSED
 SERVICE COMPLETE INAC-OPEN/INACTIVE/NO FURTHER INVESTIGATION UNFD-CLOSED UNFOUNDED NODA-NO PROSECUTION BY DA
 RFSE-VICTIM REFUSED PROSECUTION DTH-OFFENDER DECEASED

ADDITIONAL OFFENSES/

DES

Occr/ Col/ Status/

MDT

Occr/ Col/ Status/

MCT

Occr/ Col/ Status/

COOS

(SEE NARRATIVE FOR ADDITIONAL OFFENSES: ☐ YES ☐ NO)

SOR

LEAD/ORIG. AGENCY/ COQUILLE POLICE DEPT. DATE/TIME REPORTED TO OSP/ 07/05/00

HITS

DATE/TIME OF THIS REPORT/ 03/07/02 DATE/TIME OF OCCURRENCE/ 06/28/00

Polygraph

IF SUPPLEMENTAL: DATE/TIME ORIGINAL REPORT/ 06/28/00ORIGINAL SUBJECT OF REPORT/ MISSING PERSONSUBJECT OF THIS REPORT/ ASSIST OUTSIDE AGENCY - MURDER

CCFU

VICTIM/SUSPECT/ FREEMAN, LEAH NICOLE
 (ADDITIONAL VICTIMS: ☐ YES ☒ NO)
 (CO-DEFENDANTS: ☐ YES ☐ NO)

AES

LOCATION OF INCIDENT/ COQUILLE, OR. COUNTY/ COOS

Misc. Flag

LOCATION TYPE (Premise)/ UNK

Misc. Flag

METHOD OF ENTRY/

(list for each appropriate offense)

TOTAL LOSS/

TOTAL DAMAGE/

Other DE (For Field Office Use)

DOMESTIC VIOLENCE? ☐ YESTHEFT BY COMPUTER? ☐ YESGANG INVOLVEMENT? ☐ YES describe

OSP DE

Date/Initial

BIAS MOTIVATION? ☐ YES describeWEAPON USED? ☐ YES describe

UNDER INFLUENCE OF:

Alcohol? ☐ YES Drugs? ☐ YES describeZanni 2021-12-17
DEPO EXHIBIT

18

☐ UNKNOWN

The below-named subject is presently a runaway/missing person and I certify that I am the parent, legal guardian, or reporting party.

UCR OK

Date/Initial

Subject/ (Last, First, Middle) Reporting Party/ (Last, First, Middle)

Signature/ Date/

001192

REPORTING OFFICER/ JIM DAVIS-DET BPSST# 13538 DATE/ 03/07/02STN/ KLAMATH FALLS #400 ASSGN/ APPROVED/ Chris Kal DATE/ 3-11-02

001193 OREGON STATE POLICE PERSON PAGE PAGE 01193 of 7

INCIDENT # 00-255176

CODES/ V-VICTIM C-COMPLAINANT MP-MISSING PERSON R-RUNAWAY S-SUSPECT PI-PERSON OF INTEREST ARR-ARRESTED BY OTHER AGENCY

PS-PUBLIC SAFETY OFFICER M-MENTIONED W-WITNESS D-DRIVER P-PASSENGER OWN-OWNER OT-OTHER

PERSON # 1 NAME/ FREEMAN, LEAH NICOLE

CODE/ V AKA/NICKNAME/

ADDRESS/ 1173 KNOTT ST.

CITY/ST/ZIP/ COQUILLE, OR. PHONE/ 541-396-4027

DL#/ ST/ SOC/ FBI/

SID/ LOCAL ID# RES STATUS/ ☒ YES ☐ NO ☐ UNK

SEX/ F RAC/ W ETHNICITY/ CAUC DOB/ 10/29/84 HEIGHT/

WEIGHT/ HAIR/ EYES/ SKIN COLOR/

SCARS, MARKS, TATOOS/

EMPLOYER/ WORK HOURS/

ADDRESS/ PHONE/

KNOWN ASSOCIATES/

RELATION TO ASSOC/ CLOTHING/

CAUTIONS/ CORR. STATUS/ POB/

REMARKS/

** Victim/Missing Persons Only **

INJURY TYPE/ deceased INJURY LEVEL/

RELATIONSHIP TO OFFENDER/

MISSING PERSON TYPE/ MISSING PERSON STATUS/

SUSPECTED FOUL PLAY? ☐ YES ☐ NO ☐ UNKNOWN MISSING PREVIOUSLY? ☐ YES ☐ NO

RECOVERY CIRCUMSTANCES/

001193 OREGON STATE POLICE PERSON PAGE PAGE 01193 of 7

INCIDENT # 00-255176

CODES/ V-VICTIM C-COMPLAINANT MP-MISSING PERSON R-RUNAWAY S-SUSPECT PI-PERSON OF INTEREST ARR-ARRESTED BY OTHER AGENCY

PS-PUBLIC SAFETY OFFICER M-MENTIONED W-WITNESS D-DRIVER P-PASSENGER OWN-OWNER OT-OTHER

PERSON # 2 NAME/ STEINHOFF, KRISTEN NIKOLE

CODE/ M AKA/NICKNAME/

ADDRESS/ 827 SOUTH 5TH

CITY/ST/ZIP/ COOS BAY, OR. PHONE/ 541-266-8163

DL#/ ST/ SOC/ FBI/

SID/ LOCAL ID# RES STATUS/ ☐ YES ☒ NO ☐ UNK

SEX/ F RAC/ W ETHNICITY/ CAUC DOB/ 06/03/82 HEIGHT/

WEIGHT/ HAIR/ EYES/ SKIN COLOR/

SCARS, MARKS, TATOOS/

EMPLOYER/ WORK HOURS/

ADDRESS/ PHONE/

KNOWN ASSOCIATES/

RELATION TO ASSOC/ CLOTHING/

CAUTIONS/ CORR. STATUS/ POB/

REMARKS/

** Victim/Missing Persons Only **

INJURY TYPE/ INJURY LEVEL/

RELATIONSHIP TO OFFENDER/

MISSING PERSON TYPE/ MISSING PERSON STATUS/

SUSPECTED FOUL PLAY? ☐ YES ☐ NO ☐ UNKNOWN MISSING PREVIOUSLY? ☐ YES ☐ NO

RECOVERY CIRCUMSTANCES/

001194

001194

001194

INCIDENT REPORT – OUTSIDE AGENCY ASSIST – MURDER
VICTIM: FREEMAN, LEAH
MENTIONED: MCGUFFIN, NICK
CASE# SP00-255176

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SP00-255176
MURDER
VICTIM: LEAH NOCOLE FREEMAN
COQUILLE POLICE DEPARTMENT – CASE #00-1905

REFER:

ALL STATE POLICE REPORTS BEARING CASE # SP00-255176

ALL REPORTS BY COOS COUNTY SHERIFF'S DEPARTMENT

MENTIONED:

REAVES, MIKE – CHIEF
COQUILLE POLICE DEPARTMENT

NICHOLS, RAY – DETECTIVE
COQUILLE POLICE DEPARTMENT

ZANNI, CRAIG – SERGEANT
COOS COUNTY SHERIFF'S DEPARTMENT

OSWALD, KIP – DEPUTY
COOS COUNTY SHERIFF'S DEPARTMENT

PHILLIPS, BRUCE – DETECTIVE – POLYGRAPH
OREGON STATE POLICE – CENTRAL POINT

HUCK, SHARON – FORENSIC ANALYST
OREGON STATE POLICE – GHQ

JOHNSON, KAREN – FORENSIC ANALYST
OREGON STATE POLICE – GHQ

FRASIER, PAUL – CHIEF DEPUTY DISTRICT ATTORNEY
COOS COUNTY DISTRICT ATTORNEY'S OFFICE

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SUMMARY:

Leah Freeman, the victim in this case, disappeared on the evening of 06/28/00 from Coquille, Oregon. Her badly decomposed body was found on the afternoon of 08/03/00 on Lee Valley Road, several miles from the city of Coquille.

Subsequently, in July 2000, myself and several other investigators from the Oregon State Police were assigned to assist the Coquille Police Department with their investigation. From that initial request I have been called upon on numerous occasions to assist.

During the late part of January 2002 I was contacted by Chief Mike Reeves of the Coquille Police Department, who requested my assistance in reference to new information pertaining to the homicide of Leah Freeman. He advised me that he had developed several persons that needed to be interviewed.

ACTION TAKEN:

On 02/13/02 I contacted Chief Reeves at the Coquille Police Department, at which time we discussed the recent developments in the case.

Chief Reeves had told me earlier that Deputy Kip Oswald of the Coos County Sheriff's Department had agreed to submit to a polygraph in reference to matters surrounding his finding of one of the shoes belonging to the victim Freeman.

On 02/13/02 Detective Bruce Phillips, OSP Central Point arrived and was briefed in reference to the reasons surrounding his scheduled polygraph examination of Deputy Oswald.

At 3:30 PM Detective Phillips, Karen Johnson and Sharon Huck (Forensic analyst's) met with Sergeant Craig Zanni of the Coos County Sheriff's Department.

Sergeant Zanni advised us that Deputy Oswald would be available to take the polygraph at our earliest convenience. He said he had already spoken with Oswald and had briefed him.

Zanni also advised us that he had recently spoken with an informant, who told him that Kristen Steinhoff and Nick McGuffin, who were at one time boyfriend/girlfriend, had conspired in the death of Freeman.

Oswald's poly
graph results
to check

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ACTION TAKEN:

Sergeant Zanni advised that he would attempt to locate a current address for Steinhoff and relay that information to me. He also advised that he would contact Deputy Oswald and have him meet with Detective Phillips and I at the Coos Bay Patrol Office later this date.

At 9:00 PM, 02/23/02 Detective Phillips and I met with Deputy Kip Oswald at the Coos Bay Patrol Office. It was decided at that time to schedule the polygraph for the morning of 02/14/02 at the Coos Bay Patrol Office.

At approximately 10:00 AM, 02/14/02 Detective Pat Downey of the Coos County Sheriff's Department and I contacted Kristen Steinhoff at her residence and requested she make her self available for an interview in reference to this case.

She agreed to meet with me at the Coos Bay Patrol Office at 11:30 AM, 02/14/02.

At 11:30 AM Kristen Steinhoff arrived at the Coos Bay Patrol Office.

At 11:45 AM Kristen Steinhoff was interviewed, on tape, in the Criminal Division Office at the Coos Bay Patrol Office.

The following is a brief overview of her statement. The tape has been transcribed and will be attached to this report for reference.

She advised me that she and Nick McGuffin were once classmates at Coquille High School. She also was a classmate of Nick McGuffin's best friend, Ricky Crook.

She advised that on the night Leah Freeman disappeared, she was at home with her friend Zach and his daughter. (Later identified as Zachary Elderkin).

She said that about 11:30 PM that night she was taking Zach home when they encountered Nick McGuffin as he was walking around the parking lot of the Maytag store in Coquille. She said she never saw Nick's car. She said they stopped and asked him, jokingly, if he was stealing flowers. She said that he told her he was trying to find Leah.

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ACTION TAKEN:

She said she left the area of the Maytag store and drove Zach to his residence, where they talked for about 15 minutes before she left. She then drove back by the Maytag store on her way to her grandmother's house but didn't see McGuffin. She said she picked up some CD's at her grandmother's house and then drove to the Highway Deli. McGuffin showed up driving his Mustang. She said McGuffin told her he was driving the Mustang because his dad had taken his T-Bird away from him. She said she had seen him driving the T-Bird earlier that night.

She said she went home, (she and her mother live with her grandmother) where she met up with her boyfriend Scott Hamilton. She said she told Hamilton that McGuffin was coming over in a while to talk to her about Leah.

She said that Scott left and McGuffin showed up to talk about locating Leah. (Her mother was in her bedroom sleeping).

She said McGuffin told her that he and Leah had been fighting and that he thought Leah was pregnant.

She said he told her about going to Leah's house earlier that evening and throwing pebbles at her bedroom window to get her attention, but she didn't come to the window like she had in the past.

She said he then made the comment to her "when all my other girlfriends have done this in the past they have been out cheating on me". She said she never before saw anybody acting the way he acted that night. She said that he was acting like "she was never coming back".

She said that they eventually went out looking for Leah in her vehicle. When they came back to her house she and McGuffin smoked some dope (crank),

She said they were in her bedroom and she was lying back on the bed. McGuffin came over and kissed her and fondled her breasts. She said he also rubbed her crotch on the outside of her clothing, and at the same time was trying to take her pants off. She said that McGuffin had already taken his pants partly off and had part of his penis exposed. She said she finally told him to stop, which he did. He left shortly thereafter.

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She said she felt it was wrong that McGuffin would be doing this to her while at the same time worrying about where his girlfriend was, especially on the same night she disappeared.

She said she has had very little contact with McGuffin since she was subpoenaed to testify before the Grand Jury in reference to this case. She said McGuffin will hardly acknowledged her since that time.

She said she believes that McGuffin could be involved in the death of Leah Freeman. (Refer to attached transcript for additional details).

This report will be forwarded to Coos County Chief Deputy District Attorney Paul Frasier for review.

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MEETING NOTES AUGUST 15, 2000

- Sock found in fence at CHS 8/14 PM. Not been exposed to the elements.
Check and see when lawn mowed. Who might of placed it there?
 - Poly results on Nick =29 on 'did you kill her'. (Ranger has never seen higher then 30 or more - shows extreme deception.
 - FBI analysis of written statements:
 - Nick - did not request timeline
 - could be the man
 - text book stuff within the statement
 - Bartley - has conscious
 - separation from Leah
 - Bartley is our weak link
- (Kristin Steinhoff next victim)

LEAH: Victim

Missing 6/28

Spent 6/28 with Cheri and Peggy Mitchell, Brent Bartley & Nick.

Had app't. 6/29 with Health Dept., pressured by Mom.

Body found 8/03.

Prior to 10/99 was active in school, sports, chorus, well liked
with good circle of friends, good grades.

After 10/99 started going with Nick. Grades dropped, Nick's friends.

Nick introduced to sex and drugs.

Nick isolated from friends. Mom disapproved.

Physically aggressive, shy, wouldn't go with stranger.

Extremely attracted to Nick. He possessive. Relationship violent.

CORY: Mother of Leah

Reported Leah missing 6/29 1030.

Last saw Leah 6/28, 1600 hours, left with Nick, (the two getting along
great - best she had seen them getting along)

Knew Leah was going to Mitchells'

Drug user, CCH, intially did not approve of relationship.

States infatuated with Nick (x 2).

Still associates with Nick.

Called by Nick 6/28 at 2215.

**NICK: Boyfriend of Leah - controlling, manipulating, demanding, previous hx of
treating girls badly.**

Noon - 1900 with Leah

Smoked THC at Bartleys' - all three go to McGuffins' - then rent movies -
Haga's ranch - more THC and ETOH.

1745 Nick and Brent get steaks at McKays.

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CPD000323

8/15 Mtg. Notes Page 2

Back to Hagas'. Nick does not eat. Leah has steak with Brent.
1900 drops Leah off at Cheris'.
Nick and Brent pick up Nicole Price - Hagas' - 1920 Nick jumps up and states "I got to find Leah".
Meets up with Aaron West, David Jenkins and Josh Emler by Stampers - Johnson's Mill Pond.
1930 - 2100 at Pond and driving around.
2108 at Mitchells' - street near Leah's house - driving Central - up street near Leah's - back to Central - then back again - stops at Fast Mart talks with people.
2108 - 2215 searching for Leah - 2215 at Mitchell's house - calls Leah's Mom.
2245 stopped by Zavala on dike, calm, states looking for girlfriend - if he sees he is to take her home.
2230 drops Price off at her house.
MN Picks up Brent. Meets Kristin Steinoff at Fast Mart - go to her house 45"-1'.
Goes to Leah's - throws rocks at window - goes home.
School records: abusive language and behavior - evidence of violent behavior by classmates.
Uses meth and THC.
Unemployed at time of Leah's disappearance.
Navy Recruiter states that Nick said Leah and him had plans in 2 wks.
Failed polygraph, state "this is not admissable in court - you don't have shit."
Obtained an attorney 7/5.
Large display of emotion on demand.
This is about Nick - not Leah, likes attention and cameras.

BRENT: Nick's friend. 21years old.
Heavy use of ETOH and drugs - lost weight.
Cries when interviewed prior to finding body.
Passed poly #1 - failed poly #2, wrt: knowledge and involvement.
Access to pickup. ? ODL
Defensive of Nick - follower. "Nick didn't do it".
Nervous, Mom states suicidal.

Brenty passed 1st
poly
they said failed

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CPD000324

Wish List -

Time line - many of things they
think significant
Compare w/ Nick & Bartleys time line

Chart w/ Pics of potential Susps &
then work off Chart to show
eliminations & cause

Michaud / Semmesman / Sero mess
- explain them away

Sherrie Murray - Running over story
Rodney Howard mentioned
- Out on boat, waiting for him to

Amber Pattee - Kristen Steinfeld Confessed 2
her killed Leah so she could have
Nick

Sandra Mites - Port Orford Siting
deceased → Danny Hyatt - Leah buried on Semmesman
place

Cory Bryant Saw Nick hit Leah?
3rd person report

Tire Dron on Hudson ridge - traced
back to any inv veh

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CPD020471

Wish list
- explain away

MOABLEAU, ANDREW T.
09-29-44

10-13-98 FI BROOKLYN PD
OUTREACH MISSION.

copy poem
w/ name

"To my Beloved Leah"
You have my Swifly,
Swift as a doe,
You have entered my
heart, I will never let
you go.
You have taken me
by your hand
together we will
enter enter the Promised
land
Like sheep we will
all come to rest, that
we may sleep
Like waters of my
heart for you have
run so deep
Swiftly flowing, but
for you Leah, - overflow-
ing

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD000487

Like the Swift doe,
never, never slowing
to pause by my
side, ever there, till
you abide

So we will not
for you long morn,
but for a moment, and
only a moment this
divide

Out in the morning
when the Sun does
arise

Your Great Blessing
on us will be of no
great surprise

To my Little Lamb, my
ever sweetly running
Doe, My ever present
you, my healing little
Doe

"That which could
not be undone, you
have released me from
you and another little
one, you and she have
now become one
For this I thank
you my little one
for what you have
done

Good night, til
it be morning, from
my another little one
There are now three
for which I am proud
my little Leah, my
swiftly running Doll
How very much I
wish to meet you,
you will shortly
very shortly know
A lover you will know
Tom - *X

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CPD000489

Moore:

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Courtney Kuetzer (inn@facebook)
 Sero had been calling her trying to get
 a ride to BDN. (Sahana in bar w/
 Sero arrested)
 Courtney afraid of Sero - supposedly
 bec. she saw him with blood, sweat shirt

Leader:

wife @ fair - 3 girls talking ^{about} / says
 no. he was arrested on warrants

Wetmore:

Dec 07 a CZ-52 7.62x25 cal Semi-
 Auto pistol (.30 cal) was sold to Leslie Barter as
 a X-Mas for B/F Terry. Approx 4-6 mo ago heard Brent Barter
 took gun - either traded it for drugs or paid off a debt in Drugs.

Young:

Nick says can't find Sero's sweatshirt
 Sleep Sinnotts had parties all
 week long. I am Nick @ Kristen's
 Witt Morrow (pinkey, Pizzola) overhear
 says sorry he can't bring Leah back
 but he's not God.

Video @ bachelor's inn of guys who were in
 Van trying to pick up girls. (old PAN AU)
 Clifton DeRoss made threats against
 Leah/Nick - (DeRoss broke taillight on Nick's car)

Wetmore:

Chief Knight's daughter - 2ND or 3rd hand info
 BO Schierman logging hill behind ^{Hickson} ^{ridge}
 Red Honda

CPD000315

Additional lead -
 Clifton DeRoss
 - made threats
 against A, Leah

WHITE — MASTER
YELLOW — WORKSHEET
CARD — FILE

OREGON STATE POLICE

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PRIORITY
A

6/28
8-830
♀ fighting w/ ♂
'blonde
tank top

SUBJECT INFORMATION										MAKE NO MARKS IN THIS AREA													
LAST NAME					FIRST NAME					MIDDLE NAME					DEPT.		DEPT.						
Ludington, Lisa																							
NICKNAME OR ALIAS										SOC. SEC. #					FILE NUMBER								
HOME ADDRESS										CITY		STATE		ZIP		HOME PHONE		FBI #					
OLD ADDRESS(ES)										Klervall OR						351-2230 (MSG)							
EMPLOYER/ADDRESS										CITY		STATE		WORK PHONE		OCCUPATION							
RACE		SEX		D.O.B.		PLACE OF BIRTH				AGE		HEIGHT		WEIGHT		HAIR		EYES		BUILD		COMPL	
				01/20/73																			
DR. LIC. #				STATE		VEH. YR.		MAKE		MODEL		COLOR(S)				BODY STYLE							
VEH. LIC. #				STATE		CONDITION/EQUIP.				OTHER VEH/PLATE(S)													
CONCISE TIP INFORMATION										SOURCE NAME/XREF													
Saw on 6/28 - just before dark @																							
about 8-8:30pm she saw a male + female																							
fighting on W. Central before high school - no veh.																							
associated. Male: 5'8", beard, mustache, short																							
brown hair, baseball cap, jeans, flannel shirt (red plaid)																							
Female: blonde hair shoulder length in partial pony																							
SOURCE INFORMATION										MAKE NO MARKS IN THIS AREA													
LAST NAME					FIRST NAME					MIDDLE NAME					A.K.A.s								
RACE		SEX		D.O.B.		HEIGHT		WEIGHT		HAIR		EYES		OCCUPATION/EMPLOYER									
ADDRESS										CITY					STATE		ZIP						
HOME PHONE					WORK PHONE					DEPT.		DEPT. #			SID								
ADDITIONAL INFORMATION										SUSPECT NAME													
tail - Lt. Blue or white tank-top																							
RECEIVED BY										DATE		TIME		COMPUTER CHECK BY		DATE		TIME					
Grant																							
ASSIGNED TO										DATE		SUSPENSE DATE		CCH									
														CRISS									
														NCIC									
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER										CPD001422													

John talked to Nylander just before Brent did. Nylander wants to review his files first and get back to us next week
-mom still protective

Sean: Paul Davis thinks Bruce is involved
-“Wouldn't surprise me if he dumped the body”

Need to know how Nick & Bruce communicated that night
-how do we get dad there to accomplish the vehicle switch?

T-Bird:
-why are they disassociating themselves from the T-Bird?
-1 hour period Nick is in the T-Bird

Lt: Aaron West interview, July 7th
-1830-1900hrs driving around with Nick
-then at Johnson Mill Pond
-around 2100 hrs enr to pick up Leah, advises he's running late because she made him late
-supposed to pick her up at 2000 hrs

Steinoff interview, July 10th
-notes
-stopped to talk to Zach
-got some cd's
-Nick at turn out, talking about Leah
-got an air freshener
-Nick says got into fight with Dad that's why he's driving the Mustang instead of the T-Bird-Nick brought this up
-quotes from Nick: “I hope she didn't do anything stupid” “was throwing rocks at Leah's window trying to get her attention” (tells her this before he's doing it on his timeline)
-Nick was weird, not as usual. There have been times when Leah didn't show up & it didn't bother him.

****Need to go through the evidence****

July 15th-Heidi Crook & Heather Reid
-see's Leah 2100 hrs
-See's Nick @ Fast Mart in T-Bird

Briefing 01/29/10 @ 0800 hrs

how to get Dad
there
- story created
- evidence created
Shaded to
Support

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

CPD002162

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

NICHOLAS MCGUFFIN , SID # 14504778,)	
)	
Petitioner,)	Case No. 15CV1030
)	
vs.)	
)	GENERAL JUDGMENT
MARK NOOTH, Superintendent, SRCL,)	(Post-Conviction)
)	
Defendant.)	

The above-entitled matter came before the court on August 12, 2019 for a Trial on a Petition for Post -Conviction Relief.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

PRELIMINARY MATTERS

At Trial, the Defendant objected to various exhibits by the Petitioner. The Petitioner filed additional argument and requested clarification on the Courts ruling. Defendant replied. The Court, having considered the additional argument, makes the following ruling regarding the Exhibits as listed:

- a. Exhibits 61 (Backman report) and 64 (Microtrace notes) are admitted for the purpose of showing its effect on trial counsel. During trial Exhibit 61 was admitted in Defense Exhibits 103 and 104 and 64 was admitted in Exhibit 103, as attachments to depositions. This does not constitute an admission of those documents for any and all purposes.
- b. The Exhibits 22, 24, 26, 27, 28, 31, 32, 36, 40, 58, 61, 64, 68, 29, and Exhibit 1 to the Declaration of Amanda Szarkowski were admitted for their effect on Trial Counsel and the Court's ruling remains unchanged.

- 1 c. The Court reserved ruling on Exhibit 60. This Exhibit was not properly admitted at
2 trial as a business record and is excluded.

3 FINDINGS OF FACT (ALL CLAIMS)

4 Findings of Facts specific to each claim are included in the legal finding below. The court
5 makes the following Findings of Facts:

- 6 1. Petitioner was charged with Murder of Leah Freeman, and found guilty of Manslaughter I,
7 the lesser included offense, after a jury trial in Coos County Circuit Court case 10CR782.
8 He has exhausted his appeals and brings this action for Post-Conviction Relief.
9
10 2. Leah Freeman was Petitioner's fifteen-year old girlfriend. Both she and Petitioner lived in
11 Coquille, Oregon. She disappeared on June 28, 2000. Petitioner was eighteen years old at
12 the time Leah Freeman disappeared. On the night of June 28, after spending most of the
13 day with Ms. Freeman, Petitioner dropped her off at the home of her friend, Cherie
14 Mitchell, at about 7:00 p.m. Petitioner was supposed to pick Ms. Freeman up later. Ms.
15 Freeman had an argument with Ms. Mitchell and left the Mitchell home at about 9:00 p.m.,
16 on foot. Ms. Freeman was seen at various places in Coquille after leaving the Mitchell
17 residence from around 9 to 9:30 p.m. At about 11:30 p.m., Tony Messerle found Ms.
18 Freeman's right shoe on North Elm Street in Coquille. Messerle turned the shoe over to
19 police on July 4. On July 5, a Coos County Deputy Sheriff, Kim Oswald, found Ms.
20 Freeman's left shoe on a remote dirt road approximately ten miles from where the left shoe
21 was found.
22
23 3. Leah Freeman's body was found on August 2, 2000 on an embankment about eight miles
24 outside of Coquille. The body was in an advanced state of decomposition. The body was
25 found approximately three miles from where the left shoe was found.
26
27 4. Petitioner arrived at the Mitchell residence shortly after 9 a.m. to pick Ms. Freeman up. She
28 had already left. At trial, various persons testified they encountered Petitioner driving
around looking for Ms. Freeman and that they had seen Ms. Freeman walking alone.

- 1 5. The initial investigation into Ms. Freeman's disappearance was hampered by failure of local
2 law enforcement to view her disappearance as a criminal matter. Materials were not
3 provided to the District Attorney in 2001 which were later discovered in 2009 and 2010.
4 (Testimony of DA Frasier)
- 5 6. A grand jury was convened in July 2000 to investigate the disappearance of Leah Freeman.
6 No charges were brought at that time. In 2008, the case was re-opened and a second grand
7 jury convened in 2010. Petitioner was arrested and charged with Murder on August 24,
8 2010.
- 9 7. Petitioner was represented at trial by Robert and Shaun McCrea. Shaun McCrea was lead
10 counsel at trial. Robert Frasier, who was a deputy district attorney in 2001 and the elected
11 District Attorney in 2011, was lead counsel or the State. Deputy DA Erica Soule was co-
12 counsel for the State. The trial began in July, 2011, and lasted 10 days. Petitioner was
13 acquitted of Murder but found guilty of the lesser included offense of Manslaughter I by a
14 10-2 verdict.
- 15 8. Trial Counsel's theory was that the victim was murdered, but not by defendant. She was
16 able to suggest that some other unknown person was responsible, but lacked evidence that
17 specifically pointed to another suspect. Trial Counsel presented a well defended case,
18 resulting in Petitioner receiving a much less onerous sentence that he faced for a Murder
19 conviction. This is not a case where Trial Counsel was obviously and grossly incompetent,
20 particularly at trial, but rather a failure to investigate which would have uncovered
21 exculpatory information which in had a probability of effecting the outcome of the trial.
- 22 9. This Court's decision is based on its conclusion the Jury did not have all the information it
23 should have had to make its decision in this case. Whether the outcome would have been
24 different is always a matter of speculation, but it is this Courts conclusion that the Trial
25 Counsel failed to exercise reasonable professional and judgement in two respects, and that
26 27 28

1 Petitioner suffered prejudice as a result of this failure. *Ogle v. Nooth*, 355 Or 570 (2014)
2 and *Strickland v. Washington*, 104 S. Ct. 2052 (1984).

3 10. All the witnesses who testified at the PCR trial were credible, and generally consistent in
4 key issues pertinent to the case.

5 FINDINGS OF FACT AND LEGAL CONCLUSIONS (SPECIFIC CLAIMS)

6 1. Claim: Actual Innocence (Paragraph 7) is denied based on petitioner's failure to establish the
7 merits of the claim. The legal basis for denial of relief is failure to establish the factual and legal
8 merits of the claim.

9 a. Without deciding whether "actual innocence is cognizable at Oregon law in a PCR
10 proceeding, in this case, Petitioner has not shown, based on newly discovered and reliable
11 evidence it is more likely than not that no reasonable juror could have found petitioner
12 guilty beyond a reasonable doubt as articulate in *Reeves v. Nooth*, 294 Or. App. 711
13 (2018). He can show that had certain evidence been presented at trial, there is a reasonable
14 possibility that the outcome would have been different, as is therefore entitled to relief on
15 other grounds, as stated below. *Stevens v. State* 322 Or. 101(1995) as quoted in *Ogle* at
16 355.

17 b. The testimony of DA Frasier which summarized his theory of the case, summarizes the
18 evidence from which a jury could find defendant committed the crime. This is a concise
19 summary of evidence from which a jury could find the defendant guilty.

20 2. Claim: Ineffective Assistance of Trial Counsel, failure to challenge State's Conclusions regarding
21 cause and manner of Death (Paragraph 8 A) is denied based on petitioner's failure to establish the
22 merits of the claim. The legal basis for denial of relief is that Trial Counsel's handling of the
23 medical examiner testimony was a reasonable trial strategy and Petitioner has failed to show
24 prejudice from counsel's handling of the medical examiner evidence.

25 a. The medical examiner, Dr. Olson, was not able to determine an exact cause of death in this
26 case due to the advanced state of decomposition of the body. He did determine that the
27
28

1 cause of death was homicidal violence of some undetermined type. This is a conclusion
2 the jury would have made from the evidence and that the defense advanced in their case,
3 as the defense expert was of the opinion this was likely a homicide.

4 b. A motion in limine to exclude Dr. Olson's opinion would not have been successful. *State*
5 *v. Simmons*, 279 OR App 756 (2016) and *State v. Rogers* 313 OR 356 (1992).

6 3. Claim Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's
7 conclusions on bloodstain evidence (Paragraph 8 B) denied. The legal basis for denial of relief is
8 failure to show a factual and legal basis for the claim.

9 a. Trial counsel had a reasonable strategy, developed in consultation with its
10 forensic expert, trial counsel brought out, through cross examination of prosecution
11 witness Kathy Wilcox, that blood found on the victim's left shoe was "high velocity"
12 splatter. This allowed Trial Counsel to argue the absence of blood droplet on petitioner
13 and, most significantly, in his car.

14 b. Petitioner has not shown that a motion in limine would have been successful.
15 Analysis of blood evidence at the crime scene is not applicable in this case, as the crime
16 scene has never been located and there was no blood stain evidence at the location where
17 the body was found that could be recovered and tested.

18 c. Petitioner called Kenn Meneely as a defense expert on blood spatter evidence.
19 Petitioner has failed to prove how calling another expert would have provided evidence
20 that another person killed Leah Freeman, or how Mr. Meneely's expertise and testimony
21 was deficient.

22 4. Claim Ineffective Assistance of Trial Counsel, failure to provide photos of Petitioner showing no
23 defensive wounds (Paragraph 8 C) is denied based on petitioner's failure to establish the merits of
24 the claim. The legal basis for denial of relief is that Trial Counsel had strategic reason for not
25 questioning law enforcement witnesses regarding Petitioner's lack of defensive wounds or
26
27
28

1 introducing photographs of Petitioner taken by law enforcement through law enforcement
2 witnesses.

- 3 a. Trial Counsel intended to introduce the photos through Petitioner and obtain testimony
4 regarding his physical condition at the time of Ms. Freeman's disappearance when
5 Petitioner testified. Petitioner changed his mind about testifying, so she was unable to do
6 this. Her decision not to question the police officer about this is articulated in Exhibit 104
7 at 36 and is reasonable.
- 8 b. The photographs were taken on July 28, a month after Ms. Freeman disappeared,
9 diminishing their evidentiary value. The jury heard that a victim of strangulation might
10 leave scratches or bruises on her assailant. There was no evidence that Petitioner had any
11 scratches or bruises presented to the jury. Trial Counsel was not inadequate for not
12 arguing this point in closing.

13
14 5. Claim Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's Timeline
15 (Paragraph 8 D) denied based on petitioner's failure to establish the merits of the claim.

- 16 a. Trial Counsel was not inadequate for failing to introduce the phone and gas records. (8 D
17 1 and 2) Trial Counsel intended to introduce the records through Petitioner, and was
18 unable to do so when he elected not to testify. The records do not provide an alibi for
19 Petitioner. It is unlikely the Trial Court would have allowed a continuance to bring in
20 custodians of the records. Petitioner is unable to show prejudice because these records
21 were not admitted.
- 22 b. The email from Chief Daniels to DA Frasier would not have been admissible as hearsay.
23 Counsel was not inadequate for failing to seek admission of this document. (8 D 3)
- 24 c. Trial Counsel was not inadequate for failing to request "missing reports" in discovery. (8
25 D 4).
- 26 d. Trial Counsel was not inadequate in her cross examination of Denise Bertrand and has
27 failed to show prejudice as a result of any alleged inadequacy. (8 D 5)
28

1 e. Trial Counsel was not inadequate for failing to call Nicole Price as a witness. (8 D 6)

2 There is no evidence that Price would have added anything that was not covered in the
3 testimony of Brent Bartley. Price was vague about times, had been drinking, and had no
4 additional information that would have affected the outcome of the trial. It was not
5 unreasonable for trial counsel, as a matter of trial strategy, to elect not to call her as a
6 witness.

7 f. Trial Counsel was not inadequate for not calling Kristy Christoferson and Amanda

8 Landmark to testify at trial. (8 D 7) Other witnesses testified that they had seen Petitioner
9 looking for the victim at various times and places in Coquille the night she disappeared.
10 Christoferson could not be located at the time of trial. Ms. Landmark has no memory of
11 what happened that night, where other witnesses who did testify were specific and detailed
12 about seeing Petitioner. Petitioner is unable to show prejudice for failing to call these
13 witnesses.

14 g. Trial Counsel was not inadequate for failing to produce a timeline of petitioner's

15 movements on June 28. Counsel provided a timeline in the form of testimony and
16 presented a coherent argument regarding events for the jury. Counsel did not make a chart
17 or specific exhibit for the jury. This was a strategic decision, as any timeline in this case
18 will have gaps due to the vague nature of the witness testimony as to specific times, and
19 information from Petitioner could not be included as he chose not to testify. A timeline
20 could emphasize the time gaps to Petitioner's detriment. Petitioner is unable to show
21 prejudice.

22 6. Claim (8 E) Ineffective Assistance of Trial Counsel, failure to request, and offer into evidence

23 DNA Evidence (Paragraph 8 E) is allowed; The legal basis for relief is that there is more than a
24 mere possibility that counsel's acts or omissions effected the outcome of the case.

25 a. Trial Counsel retained the services of Kenn Meneely, as an expert. Mr. Meneely is not a

26 DNA expert, and trial counsel did not retain one. This decision was based the conclusions
27
28

1 in the 2001 report from the Oregon State Crime lab of testing on the victim's shoes (Ex
2 18). That report stated that the victim's DNA was found on both shoes, and that male
3 DNA was found on the left shoe that did not match Petitioner. In 2002, the analyst, Mary
4 Krings, compared the DNA on the left shoe against Deputy Oswald, and reported it was a
5 match to him.

- 6 b. In 2001, the shoes were sent to England for testing at Forensic Science Service (FSS).
7 FSS reported traces of blood on the sole, inside heel and lace end of the left shoe. (Ex 9)
8 c. Trial Counsel had these reports, as well as Ms. Krings handwritten allele charts
9 interpreting the electropherograms (the bench notes).
10 d. The bench notes show there was DNA of an unknown male in the samples. This was not
11 noted in the report.
12 e. Trial Counsel did not retain a DNA expert to review the bench notes or actual laboratory
13 analysis. She relied on the conclusion in the 2001 report without further investigation.
14 f. Relying on the conclusions in the report, Trial Counsel stipulated to the introduction of the
15 DNA reports.
16 g. At trial, Kathy Wilcox, the prosecution expert on DNA, testified that Ms. Freeman's DNA
17 was the only DNA found on the right shoe. She further testified that the only DNA found
18 on the left shoe was from the victim and Deputy Oswald.
19 h. These conclusions were incorrect. Review of the results shoe that unknown male DNA
20 was found on both shoes, not belonging to Petitioner, and those results were known in
21 2001 and 2002 when the reports were generated.
22 i. There is a factual dispute as to whether the OSP lab protocols in 2001 and 2002 required
23 the trace DNA amounts found be reported. This case went to trial in 2011. Significant
24 advances in the detection of trace amounts of DNA occurred in that ten-year period, and
25 by 2011, there is no dispute the results would have been reported at that time, or, that had a
26 defense expert asked, the results would have been disclosed.
27
28

- 1 j. At trial, the State argued that there was no unknown DA on the shoes. After the PCR case
2 was filed, the Coos County District Attorney took the unusual step of hiring an
3 independent expert, Thomas Fedor, to review the DNA results. Mr. Fedor is of the
4 opinion that the OSP crime lab made errors and that the reliance on protocols or analyst
5 discretion in 2001 is suspect. (Ex. 15 and 16).
- 6 k. In preparation of this case, the OSP lab reviewed the DNA evidence and prepared new
7 reports (Ex 17 and 18). This report reports in detail the presence of unknown male DNA
8 on both shoes, and that the DNA is not from at various males associated with the case.
- 9 l. Trial Counsel did not object to the testimony at the trial regarding the DNA. Without the
10 information that other unknown male DNA was found, Trial Counsel made the reasonable
11 strategic decision to downplay the DNA evidence and argue that Petitioner's DNA was not
12 found on the shoes.
- 13 m. Trial Counsel's theory of the case was that the victim was murdered, and that some other
14 unknown person was the perpetrator. However, without the DNA evidence, Trial Counsel
15 was reduced to showing that Petitioner could not have committed the crime and was not
16 able to produce any evidence of an alternative theory.
- 17 n. Had Counsel retained the services of an expert in DNA analysis, a review of the bench
18 notes, protocols and the FFS reports would have resulted in Counsel learning the
19 conclusion in the 2001 and 2002 reports were incomplete at best. Counsel would then
20 have been able present evidence that could lead a jury to conclude another unknown male
21 was responsible for the victim's death. Trial Counsel now acknowledges this. (Ex. 104)
- 22 o. The Court finds the testimony of Patrick Sweeny credible and persuasive on this issue.
23 Sweeny testified of the necessity of consulting with at least one and probably two experts
24 regarding the DNA evidence, in order to understand the science and confront the State's
25 experts. It was his opinion that Trial Counsel performance fell below the standard of
26
27
28

1 competence in this type of case, a Murder where the defense theory was that someone else
2 committed the offense.

3 p. While understandable given the language of the reports, Counsel's failure to retain an
4 expert and investigate further, and question the State's witness on the reports constitutes a
5 failure to engage in a reasonable investigation, and a failure to exercise reasonable
6 professional skill and judgment.

7 q. Petitioner was prejudiced by Trial Counsel's failure to investigate, retain and offer and
8 expert at trial and otherwise correct the DNA evidence offered at trial.

9
10 7. Claim Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's "bad
11 guy" evidence (Paragraph 8 F) is denied based on petitioner's failure to establish the merits of the
12 claim. The legal basis for denial of relief failure to prove factual and legal basis of claim.

13 a. An objection by Trial Counsel to the letters and diaries of the victim would have not been
14 successful. The materials were admissible under OEC 801(3). Trial Counsel relied on
15 letters and materials by the victim in its defense, and objection to the materials would have
16 undermined its use of the victim's letters.

17 b. Petitioner has failed to show prejudice as the evidence would and did have come in
18 through other witnesses.

19
20 8. Claim: Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's
21 admission evidence (Paragraph 8 GI) is denied based on petitioner's failure to establish the merits
22 of the claim. The legal basis for denial of relief is failure to prove factual or legal basis of claim

23 a. Counsel's decision not to call Meagan Edgerton, Kathy McGuffin or herself as witness
24 were a reasonable trial strategy. Counsel handled the statement on the Courthouse steps
25 allegedly made by Petitioner by placing it in context to minimize its relation to this case.
26 Trial Counsel filed a motion in limine regarding the testimony, and it was never argued
27 that the witness to the statement Melissa Beebee, made the statement. It can only be
28 concluded that this assert now is not correct.

1 b. Counsel was not inadequate for failing to call Wayne McGuffin to testify. Counsel made a
2 reasonable strategic decision not to call Wayne McGuffin as his testimony could have
3 been detrimental to Petitioner.

4 9. Claim: Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's
5 evidence regarding cleaning the Mustang (Paragraph 8 H) is denied based on petitioner's
6 failure to establish the merits of the claim. The legal basis for denial of relief is failure to prove
7 factual and legal basis for claim. Trial Counsel employed a reasonable strategy in her cross
8 examination of Kathy Wilcox, and Petitioner is unable to show prejudice in any event.

9
10 10. Claim Ineffective Assistance of Trial Counsel, failure to effectively challenge the State's
11 investigation (Paragraph 8 I) allowed regarding the Backman report (Ex 61). The remainder of the
12 claim is denied, based on petitioner's failure to establish the merits of the claim. The legal basis
13 for denial of relief is failure to show factual or legal basis for claim.

14 a. The Backman report, for whatever reason, was not known to either the State or defense at
15 the time of trial. The report has a Bates stamp on it, but does not appear in the discovery
16 logs, and neither the District Attorney or Trial counsel recall seeing it prior to the PRC
17 proceedings.

18 b. The information provided by Mr. Backman was favorable to the defense, and directly
19 contradicts the State's witness, John Lindegren, that he saw the defendant with the victim
20 at around nine in the evening. Backman was using an ATM and had the withdrawal slip
21 with a time of 9:04 p.m. He stated he saw the victim walk by while he was using the
22 ATM.

23
24 c. While other witnesses saw the victim in the vicinity of the bank that night, their testimony
25 is vague as to time. While this testimony would have corroborated Backman's, it was not
26 duplicative, as none of the other witnesses can provide an exact time.

27 d. Backman's statement makes it more likely that Lindegren confused the victim and
28 defendant with Ms. Mitchell and her boyfriend. Lindegren is the only witness who

1 testified that the victim and defendant were together after he dropped her at the home of
2 Ms. Mitchell and contradicts the defendant's claim that he did not see the victim again that
3 evening. While trial counsel argued Lindegren was mistaken, she had no evidence he was
4 wrong. Disclosure of the report could have led to admissible evidence in the form of Mr.
5 Bachman's testimony and been used to impeach Mr. Lindegren. It would have provided a
6 definite time and location of the victim. It would rebut the argument that the Petitioner
7 was lying to the police when he told them he did not see Leah Freeman again after he
8 dropped her off at the Mitchells earlier in the evening, making all his other statements
9 about what he did that evening suspect.

- 10 e. PCR counsel has not located Mr. Backman to determine what his actual testimony would
11 have been. Whether he could have been located in 2011 for trial is not known as no one
12 attempted to locate him then. Whether he can ever be found is not known. This is not a
13 situation where Trial Counsel decided not to call him for strategic reasons, but rather a
14 failure to investigate critical evidence that in all probability would have had a significant
15 impact at trial, and Mr. Backman is distinctive from all the other witnesses now suggested
16 by Petitioner as possible trial witnesses.
- 17 f. There is a possibility, based on the report of the Backman interview not being in the
18 discovery log, that it was in fact not disclosed. If that were the case, it would be a clear
19 *Brady* violation. As indicated below, this Court does not find sufficient evidence it was
20 not in the discovery. It is also possible, given the volume of discovery in the case, that
21 Counsel missed it and if that is the case this error was critical.
- 22 g. Deputy Oswald existed or that it contained anything admissible or exculpatory.
- 23 h. The OSP log would not have been admissible at trial.
- 24 i. The tip sheet and Microtrace notes were not admissible at trial. The Backman
25 information is discussed above.
- 26
27
28

1 j. There is no evidence the original death certificate and affidavit, if admitted would have
2 changed the outcome at trial.

3 k. Petitioner's spoliation argument regarding a bank video failure for failure to show the
4 video contained any exculpatory or relevant information

5 11. Claim Ineffective Assistance of Trial Counsel, failure to investigate and present evidence of third-
6 party guilt (Paragraph 8 J) is denied based on petitioner's failure to establish the merits of the
7 claim. The legal basis for denial of relief is that Trial Counsel's decision not to present evidence
8 regarding suspicious males and grey cars in the Coquille at the time of Ms. Freeman's
9 disappearance was a reasonable strategic decision, based on the information counsel had at the
10 time regarding the DNA analysis.

11 a. Her conclusion that this evidence was too attenuated and would make the defense look
12 desperate (Ex 104 at 89-90) is reasonable, particularly considering the Trial Court pretrial
13 ruling that it would not allow rumors and local gossip to be admitted.

14 b. Petitioner is not able to show prejudice in that attempts to enter this evidence would not
15 have been successful.

16 17 12. Claim Ineffective Assistance of Trial Counsel, failure to effectively investigate or call witnesses
18 (Paragraph 8 K) is denied based on petitioner's failure to establish the merits of the claim. The
19 legal basis for denial of relief is that counsel made a reasonable strategic decision not to call each
20 of the witnesses now identified by the Petitioner.

21 a. The testimony of Mona Hathaway regarding the El Camino would have required
22 speculation or conjecture not likely to have been allowed by the Court, and in any event,
23 Trial Counsel's conclusion that testimony about random grey cars in the area would have
24 been seen as desperation by the jury and detracted from more specific evidence regarding
25 other possible specific suspects.

26 b. Trial Counsel's decision not to call Charity Kinsey and Shelley Kinsey was a reasonable
27 strategic decision in the absence of any evidence connecting the two attacks.
28

- 1 c. Trial Counsel was not inadequate in her handling of the paint chip evidence. Trial
2 Counsel argued the chip was not connected to Petitioner's car, that it was not compared to
3 Scott Hamilton's car. Petitioner is not able to show the chip is actually connected to some
4 other suspect, and is therefore unable to show prejudice.
- 5 d. Trial Counsel was not inadequate regarding failure to seek admission of the poem sent to
6 the victim's funeral. This poem is vague and not a confession of someone else. It was
7 reasonable for Trial Counsel to conclude this evidence was weak and to attenuated and its
8 admission would again signal desperation to the jury.
- 9 e. Trial Counsel's decision not to call Kathy McGuffin as a witness was reasonable, based on
10 her analysis of the witnesses based on her training and experience and a balance of the risk
11 to reward.
- 12 f. Overall, counsel's selection of lay witnesses was a reasonable strategic decision based on
13 her analysis of the case and the information she had at the time of trial. It is certainly
14 possible that her decisions might have been different had she had the information
15 regarding the unknown DNA but overall her handling of witnesses did not fall below the
16 standard of permissible professional conduct.
- 17
18 13. Claim Ineffective Assistance of Trial Counsel, failure to object to State's closing (Paragraph 8 L)
19 is denied based on petitioner's failure to establish the merits of the claim. The legal basis for
20 denial of relief is that statements made by the prosecution in closing argument when viewed in
21 context were not improper.
- 22
23 a. Specifically, the statements do not constitute improper vouching, an improper comment
24 on Petitioner's right to remain silent or are made outside the scope of the evidence.
25 Petitioner has failed to show prejudice.
- 26 b. Trial Counsel made a strategic decision not to continuously interrupt closing with
27 objections was reasonable, particularly in light to the Trial Courts response when she did
28 object. Petitioner has not shown that had Trial Counsel objected the objections would have

1 been sustained, or that the failure to object effected the outcome of trial. The Trial Court
2 correctly instructed the jury regarding argument. Petitioner has failed to show a legal basis
3 for relief.

4 14. Claim Ineffective Assistance of Trial Counsel, failure to object to non-unanimous verdict
5 (Paragraph 8 M) is denied based on petitioner's failure to establish the merits of the claim. The
6 legal basis for denial of relief is *State v. Broome*, 276 Or. App.595 (2016) and *Apodaca v. Oregon*,
7 406 US 404, 92 S. Ct 1628, 32 L Ed 2nd 183 (1972). At the time of Petitioner's trial, State and
8 Federal courts allow a non-unanimous verdict in all crimes but Murder. Petitioner is unable to
9 show prejudice as had Trial Counsel objected to a non-unanimous verdict in the Manslaughter
10 charge, the motion would have been denied by the trial court and the appellate court would have
11 sustained the denial on appeal.

12 15. Claim Ineffective Assistance of Appellate Counsel, failure to effectively challenge the State's "bad
13 guy" evidence (Paragraph 9) is denied based on petitioner's failure to establish the merits of the
14 claim. The legal basis for denial of relief is failure to show factual and legal basis for the claim.
15 The materials, as noted above, were legally admissible and this issue could not have been raised by
16 trial counsel as plain error.

17 16. Claim Violation of Discovery and *Brady v. Maryland*, 373 US 83, 83 St. Ct 1194, 10 L ed 215
18 (1963). is allowed. The legal basis for relief is that had the withheld material been disclosed, there
19 is a reasonable probability that the result at trial would have been different.

20 1. Male DNA was detected on the victim's shoes during testing in 2000 that was not the
21 defendants. This information was not disclosed at trial. DNA from another male is material
22 and exculpatory. The basis for this conclusion, the actual forensic analysis (the "bench notes")
23 was disclosed but not interpreted in the report.

24 2. In 2000, when the original testing was conducted, it is contended that existing OSP lab
25 protocols did not require disclosure of the DNA in the report, at the discretion of the examiner.
26 27

- 1 3. By 2010, when the case was re-opened, significant advances had been made in DNA testing
2 allowing for more detailed and thorough analysis of trace amounts of DNA. A report prepared
3 at that time with the same information would have disclosed the trace DNA on both shoes
4 from unknown males.
- 5 4. In 2010, the only DNA reported on the victim's shoes was that of the victim and Deputy
6 Oswald, a police officer who had handled the shoe. While the allele charts and
7 electropherograms were disclosed, the conclusion that there was unknown male DNA in the
8 sample was not. The OSP report and trial testimony presented to the jury and not challenged
9 by the defense, made it appear to the jury that there was no other DNA on the shoes, which
10 was not true and was known to the State at the time of trial, although the District Attorney,
11 also relying on the conclusions in the 2001 report, also did not know about the other DNA,
12 resulting in his argument at trial that no other DNA was found on the shoes other than the
13 victim and the deputy sheriff who had handled the shoe.
- 14 5. As a result of the investigation in the PCR case, the OSP lab re-assessed the data thoroughly
15 and completely, and determined there was additional unknown male DNA in the tested
16 materials. There is a possibility that the same unknown male contributed DNA to both the left
17 and right shoes. The conclusions a reader is likely to draw from the 2000 and the 2017 reports
18 are strikingly different and would have altered the trial strategy employed by Trial Counsel.
19 These conclusions are supported by the conclusions of the expert called in the PCR case, Dr.
20 Nasir
21
- 22 6. While the unknown DNA could have been deposited by innocent transfer, it is also possible it
23 was not. This would be a factual question for the jury.
- 24 7. Trial counsel did not investigate this matter further as a matter of trial strategy, which was
25 based on the information she had at the time. Had she been presented with the conclusion that
26 other male DNA was found on the shoes, the trial strategy would have been different,
27 particularly if the other material unlawfully withheld had been disclosed, as discussed below.
28

1 Trial counsel's failure to investigate the DNA evidence and hire a DNA expert, discussed
2 above, was a result in large part due to the State's failure to disclose the conclusion that other
3 male DNA was found on the shoes.

4 8. The District Attorney was laboring under the same lack of information. This is not a case
5 where the District Attorney, who sincerely and passionately has sought to determine what
6 happened to the victim, deliberately withheld exculpatory information. Rather, the material
7 from the OSP lab provided information in its report and through the testimony of Kathy
8 Wilcox that created a false impression that no other DNA was found on the shoes. This failure
9 is a failure to disclosed exculpatory information.

10 9. The failure to disclose the Nick Backman interview has not been proven. The District
11 Attorney does not recall the document, but it is Bate stamped and hole punched, so it is
12 reasonable to conclude it was in the discovery matters.

13 10. If the report was in fact disclosed, but somehow not seen by either the District Attorney or
14 Trial Counsel, it would be a clear failure of defense counsel to investigate and properly present
15 evidence at trial, as the failure to present this information raises the possibility that the result at
16 trial would have been different, as discussed above.

17 11. The other alleged Brady violations do not rise to the level that had the material been disclosed,
18 it would have been likely to have changed the outcome of the trial or would not have been
19 admissible or led to admissible evidence.
20
21

22
23 For the claims allowed above, the following relief is granted: Conviction for Manslaughter I is
24 set aside and the case is remanded to the Trial Court for further proceedings consistent with this
25 order.

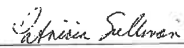
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27 This matter involves Federal; and/or State Constitutional issues.

28 The court adopts all oral findings made on the record and incorporates them into this judgment.

1 All questions presented were decided. This judgment shall constitute a final General Judgment
2 for the purposes of appellate review and for purposes of res judicata.

3
4 DATED this 26th day of November , 2019.

Signed: 11/29/2019 04:51 PM

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6 
Sr. Judge Patricia Sullivan, Circuit Judge

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10 CERTIFIED TO BE A TRUE
11 COPY OF THE ORIGINAL

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13 Court Clerk
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